

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**October 9, 2003**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, October 9, 2003, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Ronald Marnell, Chair; Kerry Coulter, Vice-Chair; James Barfield; Bud Hentzen; John W. McKay Jr.; Bill Johnson; Morris K. Dunlap; Elizabeth Bishop; M.S. Mitchell; Ed Sunquist; Frank Garofalo. David Wells and Ray Warren were not present. Staff members present were: Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; and Rose Simmering, Recording Secretary.

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1. Discussion on Committee assignments by the MAPC Chair.

MARNELL Commissioner Coulter has accepted assignment to be the Chair of Advanced Plans. Commission Bill Johnson has accepted assignment to be Chair of the Subdivision Committee.

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2. Approval of MAPC meeting minutes September 18, 2003.

BISHOP I would like to make a small correction on page 5, the word "recession" needs to be changed to "recision".

GAROFALO I will be abstaining since I was absent for that meeting.

**MOTION:** That the minutes for September 18, 2003 be approved with noted changes.

**COULTER** moved, **DUNLAP** seconded the motion, and it carried (11-0-1) **GAROFALO** abstains.

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3. **Consideration of Subdivision Committee Recommendations**

- 3-1. **SUB2003-86 – Appeal of Lot Split for Lot 4, Block E, Lost Acres Addition (by Daniel Doyle).**

**OWNER/APPLICANT:** M.S. Baboldashtian, 2452 N. Rugland Ct., Wichita, KS 67226

**SURVEYOR/ENGINEER:** Maury Breidenthal, 7829 E. Rockhill, Ste. 301, Wichita, KS 67206 (Architect)

**LEGAL DESCRIPTION:** Lot 4, Block E, Lost Acres Addition to Wichita, Sedgwick County Kansas.

**NOTE:** Mr. Doyle and neighborhood residents are in opposition to the proposed lot split.  
All (opposing) residents have been notified of the Subdivision Committee's meeting.

Planning Staff recommends that the Lot Split application be approved.

NEIL STRAHL Planning staff presented the staff report.

MAURY BREIDENTHAL, 7829 E. ROCKHILL, STE. 301, WICHITA KS 67206 (ARCHITECT) I am representing the owner of the property. Are there any questions?

BISHOP The applicant mentions that he has paid a lot to the City for cutting the grass on the property, and my question was why was he paying the City for that?

BREIDENTHAL He did not have the equipment to do that much yard work, and that is part of the motivation for splitting these up and developing them so that you have something that is manageable.

BISHOP In his letter he mentioned that his neighbor had offered to buy the western parcel, and that to do so would prevent the development of the other parcel. Can you explain that?

BREIDENTHAL I don't have all the facts on that either; whether he was taking so much of the parcel that the remainder wasn't legally developable or some other perimeter, but I don't know exactly.

BISHOP The current subdivision regulations, I believe when you don't have a sufficient amount of frontage for on street parking, that you need to provide four off-street parking spaces. As we were told at Subdivision Committee, this would probably be grandfathered in because it was originally platted prior to that subdivision regulation being formulated. Would the applicant offer four off-street parking spaces to satisfy that concern?

BREIDENTHAL I think he would be amenable to that. As far as the site allowing something like that, I think that is within his power and his intent to alleviate that parking situation. Or, it does seem feasible for off street parking spaces for a lot that is comparable to the sizes of the others. It can be done. There is enough area to do it. I think he has the intent to get along with the neighbors, and if that involves additional parking, I think he is willing to do that.

DAN DOYLE, 4327 SALEM CT., WICHITA KS 67220 I spoke with the owner and I offered to buy the west half of it if he was to split it, and he declined. He has used that property for his own personal trash dump. I am opposed to him splitting this lot. In the neighborhood, the average distance between each house is in the 20-25 foot bracket and there is no way that he can put two houses on that lot and maintain the continuity of the neighborhood. I think it will lower property values on the court. I believe he will probably put rentals on there, and I don't want to live next to that.

DUNLAP Mr. Doyle, you offered to buy the west part of the lot, which would require a lot split. Are you still willing to buy the west half; in which case you agree with a lot split or you don't agree with the lot split?

DOYLE I am opposed to splitting the lot. The lesser of two evils would be if I could purchase the west half of it, and leave it as is except for cleaning the trash and debris out of it, and to maintain in the neighborhood a large amount of space between the housing. He doesn't want to sell the west half only because he hasn't made up his mind which side he wants to live on. The neighborhood is against the lot split.

BARFIELD Are you opposed to the development or the lot split?

DOYLE It was developed for one house. That was the plan when the area was developed. It was set up for one house to be there.

BARFIELD Are you opposed to any development there?

DOYLE I would like to see it just like it is now, and see nothing there, but the lesser of two evils which is one house versus two. I am opposed to splitting it and putting two houses there.

KRIS C. DOYLE, 4327 SALEM CT., WICHITA KS 67220 I am opposed to the lot split. There are not four spaces for off-street parking. The way that the driveways are, there would barely be enough room for one car between the two driveways, let alone four for each property; which if you split it, there would be three properties which makes twelve spaces for people to park. Also, the gentleman has not even cared enough to come to these meetings as he sends his architect. I would like this not to be approved, and leave it as one lot in the neighborhood and that is my feelings for today.

JOHN KERSHAW, 4419 SALEM, WICHITA, KS 67220 I am opposed to this lot split. This lot was set up for one home. If you split this lot, the one to the east will be the smallest lot in the neighborhood. There will be none smaller than that, and we don't have the parking or the space between the homes. I don't know why the applicant can't build or develop this property with one home on it like it was designed for.

GAROFALO When you and Mr. Doyle talked about the distances between the homes, what are you talking about? The property lines or the actual distance from building to building?

KERSHAW The actual distance for me is the building to building. You chop this lot up like this and one home is going to be sitting on top of the other one. In addition this is a court, there isn't the parking which has been mentioned, and not only that, all along here there is the Chisholm Creek that runs along the backside of this property. I believe environmentally it will be an impact on the animals. We have deer, rabbits and you start chopping it up, and put on more and more homes, it takes away from the fact that this is one of the appeals of the neighborhood. The lot was designed for one home. I don't see what the problem is.

BREIDENTHAL I think one of the important things to note is to actually look at the buildable square feet on each lot. I think that is an important aspect of this, and these two lots even split are within a couple hundred feet of many of the single lots, as far as the buildable square footage on the lot itself. The geometry of the lots would allow houses to be far enough apart that it would be contextual with the rest of the neighborhood. The total square footage of the lot that we are dealing with is over 21,000 feet roughly, and the buildable area is over 12,000 square feet, which is comparable with many of the lots throughout the development.

BISHOP On both lots?

BREIDENTHAL Yes. The total lot is over 21,000 feet but because of easements and setbacks, when you take those out of the equation, the land you can actually build on is comparable and larger than some of the lots in the same development.

DUNLAP Is there a reason the lot was not more evenly split, instead of the way that it is with 8,600 feet on one side and 12,550 on the other?

BREIDENTHAL The owner wanted to be able to do these independently, if possible, so the reason the configuration of the split is like it is, we had to have sufficient width in the cul-de-sac for approach for one lot, and the other lot needed to be able to be contiguous to our utility easements that run northwest to southeast.

MITCHELL What is the approximate distance along the building setback line for each of the parcels?

BREIDENTHAL The frontage would be probably a little greater than 45 feet on Parcel A and the frontage itself probably 70 feet on Parcel B.

BARFIELD Has your client made themselves available to answer questions from the neighbors?

BREIDENTHAL I don't know. He had discussion in the past, and I don't know what the content of that discussion was.

HENTZEN If this split is granted, does the size of these two lots meet the requirements of square footage for building in that area?

STRAHL Yes.

BISHOP Currently, subdivision regulations require four off-street parking spaces. In other words, in the driveway for the cul-de-sac; so if the applicant were to grant that, is there some way that can be binding within an action that we took?

STRAHL They could file a restrictive covenant which is what we do with the plats.

**MOTION:** To approve application as submitted.

**MARNELL** moved, **HENTZEN** seconded the motion.

**SUBSTITUTE MOTION:** To approve as submitted with a restrictive covenant to provide for four off-street parking spaces per parcel.

**BISHOP** moved, **BARFIELD** seconded the motion.

HENTZEN I think that to tell somebody that they can't build out there unless they have four spaces off-street is a ridiculous requirement. If it is not requested of the rest of the people that live there, touching that home or the parcels, why would you require them to have that many spaces?

BISHOP That is the practice for cul-de-sacs within the "Subdivision Regulations" today.

HENTZEN Where are you going to put them; on a cul-de-sac, in the front yard or the back yard?

BISHOP Within the driveway.

**SUBSTITUTE MOTION CARRIED:** 9-3 (**HENTZEN, MARNELL MITCHELL, OPPOSED**).

3-2. **SUB2003-103 – One-Step Final Plat – UNIVERSAL FIFTH ADDITION, located north of Kellogg, west of Greenwich Road.**

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for guarantees or easements. **The applicant proposes to tie together by covenant this site with the adjoining property to the east which will negate the need for a guarantee for a sewer extension.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. Improvements are needed at time of site development.**
- D. The signature line for the City Clerk needs to be revised to reference "Karen Schofield".
- E. The MAPC signature block needs to reference "Ronald L. Marnell, Chair".
- F. The tie point needs to be corrected to reference Universal 4<sup>th</sup> Addition.
- G. The legal description does not correspond with the dimensions on the face of the plat.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.

- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)) . This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

MCKAY moved, HENTZEN seconded the motion, and it carried (12-0).

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**3-3. SUB2003-104 – One-Step Final Plat – EAGLES LANDING AT NORTH OLIVER THIRD ADDITION, located on the west side of Oliver, south of 45<sup>th</sup> Street North.**

- A. Petitions have been provided with Eagles Landing at North Oliver 2nd Addition for sewer, water and paving improvements. **City Engineering requests new petitions for future improvements. The applicant shall provide to Debt Management a respread agreement for special assessments on existing improvements due to the lot reconfiguration.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan has been approved.**
- D. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves for that Addition, but not being replatted by this Addition, the above covenants and/or other legal documents shall be provided which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- E. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- F. The signature line for the City Clerk needs to be revised to reference "Karen Schofield".
- G. The MAPC signature block needs to reference "Ronald L. Marnell, Chair".
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy has requested additional easements.**

- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **HENTZEN** seconded the motion, and it carried (12-0).

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**4-1. VAC2003-48 – Request to Vacate Platted Setbacks, located southwest of the Pawnee-Seneca Intersection.**

**OWNER/APPLICANT:** NNN Westway Shopping Center

**AGENT:** AM Consulting Inc, c/o Kim Edgington

**LEGAL DESCRIPTION:** The south 65-feet of the platted 100-foot building setback line running parallel to the north property line of Lot 1, Block 1, Westway Addition and parallel to Pawnee Avenue, the west 65-feet of the platted 100-foot building setback line running parallel to the east property line of Lot 1, Block 1, Westway Addition and running parallel to Seneca Street and the west 55-feet of the platted 90-foot building setback line running parallel to the east property line of Lot 1, Block 1, Westway and parallel to Seneca Street, as dedicated, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located southwest of Seneca Street – Pawnee Avenue intersection, 2515 South Seneca Street.

**REASON FOR REQUEST:** Provide more area for development.

**CURRENT ZONING:** Subject property is zoned "LC" Limited Commercial and "GO" General Office with CUP DP-21 overlay. Properties east and north are zoned "LC". Properties to the south and west are zoned "SF-5" Single Family Residential.

This site is subject to CUP DP-21. The applicant must apply for an adjustment or an amendment to the CUP, depending on the extent of any other proposed changes to the CUP including these setback vacations; the platted 100-foot and 90-foot setbacks are shown on CUP DP-21. The vacation request would leave a 35-foot setback along the Seneca Street and Pawnee Avenue frontages. Approval of the adjustment or an amendment, must be approved before the vacation proceeds to the WCC. Conditions of approval of the adjustment or amendment could effect the vacation of the setbacks. The Westway Addition was recorded 10-08-1986.

Current "LC" zoning district setbacks are 20-foot front setback and 15-foot for street side. The prevalent setback on this area's non-residential zoning (north to May Street – south to 27th Street South - west to Glenn Avenue – east to the Arkansas River) is 35-feet.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted setbacks as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time September 18, 2003 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted setbacks and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

- B. Therefore, the vacation of the portion of the platted setbacks described in the petition should be approved with conditions:

1. Approval of an amendment or adjustment to CUP DP-21, prior to WCC action on the vacation request. The action taken on the CUP could affect the amount of the vacation of the setbacks.
2. Vacate only that portion of the setback as described in the legal description, which will leave a 35-foot setback along Seneca and the Pawnee frontage.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Approval of an amendment or adjustment to CUP DP-21, prior to WCC action on the vacation request. The action taken on the CUP could affect the amount of the vacation of the setbacks.

2. Vacate only that portion of the setback as described in the legal description, which will leave a 35-foot setback along Seneca and the Pawnee frontage.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**SUNQUIST** moved, **MCKAY** seconded the motion, and it carried (12-0).

**4-2. VAC2003-49 – Request to Vacate Platted Right-of-Way of West Street and North Street, located northeast of the Greenwich and 53<sup>rd</sup> Street North intersection (County Case).**

**APPLICANTS:**

McNeil Enterprises LC c/o Mike McNeil  
Don Johnson

**LEGAL DESCRIPTION:**

That platted portion of the North & West Street ROWs abutting Lots 814, inclusive, Block 4, Greenwich Addition, as dedicated, Wichita, Sedgwick County, Kansas,

**LOCATION:**

Generally northeast of the Greenwich Road – 53<sup>rd</sup> Street North intersection, more specifically north of the West Central – West Street intersection.

**REASON FOR REQUEST:**

Reversion rights

**CURRENT ZONING:**

Site and surrounding properties are zoned "RR" Rural Residential

The applicants are requesting consideration to vacate portions of the platted North & West Street ROWs, located north of the West Street – West Central Intersection. The applicants have noted that the rural site has never developed to the density that the plat anticipated. The eastern middle portion of the North Street ROW has been vacated. There is no sewer or water in the ROW. Setbacks are current and would remain in effect and move with the adjusted property lines. Reversion rights of the 24-foot West Street ROW and the 20-foot North Street ROW would go the platted (all in the Greenwich plat) abutting property owners. All abutting property owners, but the owner of the unplatted tract north of the North Street ROW, have signed the petition and the application to vacate. This tract is used for agriculture and has direct access to Greenwich. The City of Bel Air has recently annexed up to the west side of Greenwich. There have been no protests to the proposed vacation. The Greenwich Addition was recorded 08-03-1883.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted North & West Streets ROWs as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time September 18, 2003 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted street ROWs and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of those portion of the platted street ROWs described in the petition should be approved with conditions:

- (1) Vacate only those platted portions of the North & West Street ROWs abutting Lots 18-14, inclusive, Block 4, Greenwich Addition.
- (2) Setbacks are current and would remain in effect and move with the adjusted property lines.
- (3) Reversion rights of the 24-foot West Street ROW and the 20-foot North Street ROW would go the platted (all in the Greenwich plat) abutting property owners
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards, including standards for a private drive or a parking lot.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only those platted portions of the North & West Street ROWs abutting Lots 18-14, inclusive, Block 4, Greenwich Addition.

- (2) Setbacks are current and would remain in effect and move with the adjusted property lines.
- (3) Reversion rights of the 24-foot West Street ROW and the 20-foot North Street ROW would go the platted (all in the Greenwich plat) abutting property owners
- (4) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (5) All improvements shall be according to City Standards, including standards for a private drive or a parking lot.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**SUNQUIST** moved, **MCKAY** seconded the motion, and it carried (12-0).

**4-3. VAC2003-50 – Request to Vacate a Portion of a Platted Alley, located southeast of the Oliver/Douglas intersection and west of Glendale.**

**APPLICANTS:** Carl Chuzy Living Trust

**AGENT:** Baughman Company PA c/o Russ Ewy

**LEGAL DESCRIPTION:** That portion of the 15-foot alley platted in the East Douglas Avenue Addition abutting Lot 13, East Douglas Avenue Addition and Lots 12-16 and the east 7.5- feet of Lot 17, East Douglas Avenue Addition, as dedicated, Wichita, Sedgwick County, Kansas,

**LOCATION:** Generally southeast of the Douglas Avenue – Oliver Avenue intersection and west of Glenn Avenue.

**REASON FOR REQUEST:** Reversion rights

**CURRENT ZONING:** Properties surrounding the alley are zoned "SF-5" Single-Family Residential and "B" Multifamily Residential west of the alley, "LC" Limited Commercial north & west of the alley and "LC" & "B" south of the alley

The applicants are requesting to vacate the eastern portion of the platted west to east alley ROW. The alley is developed and there is sewer or in the ROW. Setbacks on abutting lots would remain in effect and move with the adjusted property lines. Reversion rights of the 15-foot alley ROW would go ½ to the north and ½ to the south. All abutting property owners have signed the petition and the application to vacate. There have been no protests to the proposed vacation. The Douglas Avenue Addition was recorded 03-24-1887.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, utility representatives and other interest parties Planning Staff recommends approval to vacate the platted alley ROW as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
- 1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time September 18, 2003 which was at least 20 days prior to this public hearing.
  - 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted alley ROW and the public will suffer no loss or inconvenience thereby.
  - 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted alley ROW described in the petition should be approved with conditions;
- 1. Stop vacation 5-ft short of the point of intersection between the east-west alley & the north-south alley.
  - 2. There are utilities in the alley, retain the alley as a utility easement.
  - 3. Dedicate of 5-feet to the 15-foot alley to become easement.
  - 4. Guarantee the closure of the alley return, or modify the alley to driveway standards.
  - 5. Provide cross lot access.
  - 6. Contingent dedication of 10-foot of ROW, along Douglas.
  - 7. Setbacks would remain in effect and move with the adjusted property line.
  - 8. Reversion rights would go to the abutting property owners, all in the East Douglas Addition.
  - 9. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  - 10. All improvements shall be according to City Standards, including standards for a private drive or a parking lot.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Stop vacation 5-ft short of the point of intersection between the east-west alley & the north-south alley
- (2) There are utilities in the alley, retain the alley as a utility easement
- (3) Dedicate of 5-feet to the 15-foot alley to become easement.
- (4) Guarantee the closure of the alley return, or modify the alley to driveway standards.
- (5) Provide cross lot access
- (6) Contingent dedication of 10-foot of ROW.
- (7) Setbacks would remain in effect and move with the adjusted property line.
- (8) Reversion rights would go to the abutting property owners, all in the East Douglas Addition.
- (9) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (10) All improvements shall be according to City Standards, including standards for a private drive or a parking lot.

BILL LONGNECKER, Planning staff. I have been informed by the applicant that the City Traffic Engineer has agreed to remove Condition #6 of this vacation case, which was the contingent dedication of the 10 foot of right-of-way along Douglas.

**MOTION:** To approve 4-3 removing Condition #6.

**MCKAY** moved, **COULTER** seconded the motion, and it carried (12-0).

4-4. **VAC2003-51 – Request to Vacate a Portion of a Platted Utility Easement, located northeast of the Webb Road/Mt. Vernon and Mt. Vernon/Stoneybrook intersection.**

**OWNER/APPLICANT:** Clint Miller Homes

**AGENT:** Ruggles & Bohm, c/o Chris Bohm

**LEGAL DESCRIPTION:** The north 8.00 to 9.45-feet portion of the platted 20-foot utility easement that runs parallel to the south property line of Lot 24, Block 4, Brentwood Village Addition, as dedicated, Wichita, Sedgwick County, Kansas.

The north 8.00 to 9.45-feet of platted Reserve F that runs parallel to the south property line of Lot 24, Block 4, Brentwood Village Addition, as dedicated, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located east of Webb Road, southeast of the Stoneybrook Goebel intersection,

**REASON FOR REQUEST:** Irregular shape of the lot presents hardship in developing as single family residential.

**CURRENT ZONING:** Subject property and all adjoining properties are zoned "SF-5" Single Family Residential.

The applicant is requesting consideration for the vacation a portion of the uses of platted Reserve F, which runs parallel to the south side of Lot 24 Block 4, Brentwood Village Addition and the north portion of the platted 20-foot utility easement. The irregular shape of the lot presents a hardship in building a single-family residence on it. The uses that Reserve F has been set aside for include open space, landscaping, and recreational purposes. There is a 50-foot pipeline easement within the 77.98-foot reserve. The Reserve is owned and maintained by the Home Owners Association, of which the site is part. The Brentwood Village Addition was recorded with the Register of Deeds 05-02-97.

There are no sewer or water in the platted easement. The applicant has provided a letter from the President of the Home Owners Association supporting the vacation request.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, utility representatives and other interested parties, Planning Staff recommends approval to vacate that portion of the platted utility easement and the uses of that portion of Reserve F as described in the legal description and the plat with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, by publication in the Derby Reporter of notice of this vacation proceeding one time September 18, 2003 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted easement and the uses of Reserve F within a described portion and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted easement described in the petition and the uses of Reserve F within a described portion should be approved with conditions;



- (1) Vacate only that portion of the easement as described in the legal description and Provide Staff with an original dedication of easement within Reserve F, to be recorded with the Register of Deeds. The dedication of the easement cannot encroach into the 50-ft pipeline easement.
- (2) Vacate those uses as listed in Reserve F as confined to that portion of Reserve F as described in the legal description to allow for development as single-family residential.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the easement as described in the legal description and Provide Staff with an original dedication of easement within Reserve F, to be recorded with the Register of Deeds.
- (2) Vacate those uses as listed in Reserve F as confined to that portion of Reserve F as described in the legal description to allow for development as single-family residential.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**SUNQUIST** moved, **MCKAY** seconded the motion, and it carried (12-0).

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5. **Case No.: CON2003-35** – Linda Patrick and Donna Castaneda (applicants) Request Sedgwick County Conditional Use for Temporary manufactured home and Temporary accessory manufactured home dwelling on property zoned "SF-20" Single-Family Residential on property described as;

The East Half of the Northeast Quarter of the Northeast Quarter, except the North 734 feet thereof, Section 8, Township 28 South, Range 2 East of the 6th P.M. Sedgwick County, KS. Generally located South of 31<sup>st</sup> Street South and west of Webb Road.

**BACKGROUND:** The applicant is seeking a Conditional Use to permit a "temporary manufactured home" and a "temporary accessory manufactured home dwelling" on eight plus acres located 1/8 mile south of 31<sup>st</sup> Street South and west of Webb Road. The application area is developed with a doublewide manufactured home occupied by one of the applicants. Due to a medical condition, the applicant currently living onsite requires assistance with daily living activities. The other applicant intends to locate a second home on the property, and provide the needed medical assistance. When there is no longer a need for both homes on the site, the existing manufactured (original) home will be removed. The attached site plan depicts the second home is to be located north of the existing home. A plat has been submitted for this site.

The Unified Zoning Code permits a second unit on the same lot as a "temporary manufactured home," and allows for the construction of a second unit on the same lot provided the second home is constructed within one year from the date of approval and the first home is removed within 90 days of the completion of the second structure.

In this instance, the second home would need to be removed in the event the applicant is unable to complete the project on-time or obtain a time extension.

Nearby land is used for a variety of land uses ranging from: vacant, agricultural, large lot residential and funeral home. All surrounding land is zoned "LC" Limited Commercial or "SF-20" Single-family Residential.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20" Single-family Residential and "LC Limited Commercial; vacant, funeral home  
SOUTH: "SF-20" Single-family Residential; agriculture  
EAST: "SF-20" Single-family Residential; residences, vacant, church  
WEST: "SF-20" Single-family Residential; vacant, residential

**PUBLIC SERVICES:** The applicant intends to utilize existing onsite facilities. City of Wichita sewer and water services are not available at this location. Webb Road is a paved two-lane road.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide Map depicts this site as appropriate for "low density residential" uses that are defined as 1-6 dwellings units per acre. The site is also located within the 2030 urban service delivery area.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the adopted site plan and in conformance with applicable

sections of Unified Zoning Code Section III-D. I. dealing with manufactured homes in the County, including III-D. I. (3) and (4).

2. In the event the applicant cannot complete the second home on time, or fails to obtain an extension of time, it is the second home that is to be removed.
3. The applicant shall obtain all applicable permits, including but not limited to building, health and zoning.
4. Any violation of these conditions shall render this Conditional Use Permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Nearby land is used for a variety of land uses ranging from: vacant, agricultural, large lot residential and funeral home. All surrounding land is zoned "LC" Limited Commercial or "SF-20" Single-family Residential. This area does not have municipal services. As municipal services are extended closer, this area will see increasing development pressures. At this point in time, the character of the area is primarily large-lot residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site could continued to be used as zoned, however the medical needs of one of the applicants could not be addressed in the manner desired.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request should not detrimentally affect nearby property as long as the site is developed in general conformance with the site plan, and the fact that all land abutting the site is vacant, agricultural or residential.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of this request will not diminish the public's welfare whereas denial of the request would make it difficult or impossible for the applicant to receive the assistance she seeks in the manner proposed.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as the Land Use Guide Map depicts this site as appropriate for "low density residential" uses that are defined as 1-6 dwellings units per acre. The site is also located within the 2030 urban service delivery area.
6. Impact of the proposed development on community facilities: Community facilities will not be impacted to any significant degree.

DALE MILLER, Planning staff. This is a request for a Conditional Use for an accessory apartment, and also to take care of a medical hardship. When I wrote the staff report I should have added a sentence to clarify that in the event that things go sour and the second home doesn't work out, it is the second home to be removed, not the home that is out there today. Then it also says that it is subject to platting. There was a plat that was originally started on this and then they discovered they didn't need to plat, so it shouldn't be approved subject to platting.

GAROFALO You mentioned the removal of the second home, not the original?

MILLER Right because the first home is the current owner, the one that has the medical hardship, and in the event that something were to happen to where this thing doesn't work out then the second home would need to be removed or have an amendment to the Conditional Use for an extension of time for them to complete the second home.

GAROFALO So that conditions needs to be added?

MILLER Yes.

**MOTION:** To approve item #5 as amended by staff.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (12-0).

6. **Case No.: ZON2003-41** – FLKS Land Development LLC, (Steven Barrett); Baughman Company (Russ Ewy) Request Sedgwick County Zone change from "SF-20" Single-family Residential to "SF-5" Single-family Residential on property described as;

The West Half of the Southeast Quarter of Section 12, T27-S, R-2E of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the railroad right-of-way on the north. Generally located North of 13<sup>th</sup> Street North, approximately 1/2 mile west of 159<sup>th</sup> Street East.

#### DEFERRED FROM MAPC ON 9-18-03

**BACKGROUND:** The applicant is seeking "SF-5" Single-family residential zoning on 75.36 acres of land located north of 13<sup>th</sup> Street North and ½ mile west of 159<sup>th</sup> Street East. The property is currently zoned "SF-20" Single-family Residential, and is currently used as farm ground. The applicant seeks the zoning in order to develop a 168-lot residential development. A thick hedgerow of mature trees surrounds the entire site.

13<sup>th</sup> Street East provides the property's only street frontage, and is an unpaved sand and gravel street with 30 feet of half street right-of-way. The property abuts the Savannah at Castle Rock Ranch additions to the west that are platted for single-family residences. Sundance, a local street in one of the Savannah at Castle Rock Ranch additions, ends at the applicant's western property line, and provides a second access point to the property.

Property surrounding the application area is either in agricultural or residential uses.

**CASE HISTORY:** A preliminary plat depicting single-family lots has been filed as Stonebridge Addition, and was heard by the Subdivision Committee on July 31, 2003.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-20", Single-family Residential; railroad tracks, vacant  
SOUTH: "SF-20", Single-family Residential; pasture, horse barn  
EAST: "SF-20", Single-family Residential;  
WEST: "SF-20" and "SF-5", Single-family Residential; residences

**PUBLIC SERVICES:** 13<sup>th</sup> Street is a two-lane sand and gravel road with 30 feet of half-street right-of-way. The "2030 Transportation Plan" indicates this segment of 13<sup>th</sup> Street is to be a four-lane expressway, and the "Sedgwick County 2003-2007 Capital Improvement Plan" indicates this segment of roadway is to be widened to four lanes in 2006. Public sewer service is expected to be available by the end of 2004. Water service is available for extension.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita-Sedgwick County Comprehensive Plan depicts this site as appropriate for "low density residential", and the site is located within Wichita's 2010 Urban Service Area.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year. This recommendation is based upon the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding uses are either zoned "SF-5" or "SF-20" Single-family Residential. Surrounding property is either in agricultural or residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-20" Single-family Residential that permits single-family residential use on minimum lot sizes of 20,000 square feet. The property could be developed as currently zoned, however with the programmed capital improvements mentioned above, it would be appropriate to permit more dense residential development than is allowed by the current zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The application area is part of a larger portion of eastern Sedgwick County that has been slowly, but steadily transitioning from agricultural and large lot residential uses to nonagricultural, urban density developments at a greater density than the "SF-20" district allows. Development permitted by the "SF-5" district permits similar uses as the "SF-20" district, just at greater densities. The increased densities permitted by the "SF-5" district should not detrimentally affect nearby property once public sewer service is available and 13<sup>th</sup> Street is improved to accommodate increased traffic.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The proposed zoning is in conformance with adopted plans. The "Wichita-Sedgwick County Comprehensive Plan" depicts this site as appropriate for "low density residential" uses, and the site is located within Wichita's 2010 Urban Service Area.
5. Impact of the proposed development on community facilities: If developed as anticipated with 168 single-family residential lots, current and planned facilities and improvements will be able to accommodate the proposed development.

DALE MILLER, Planning staff presented the staff report.

MITCHELL Is any part of the railroad right-of-way included in the plat?

MILLER No.

DUNLAP The development to the west of the property in question, on the north side, has not taken place right?

MILLER Immediately north of the application area?

DUNLAP No, west of the application area, on the north side of the public plat along that line west and north of that.

MILLER This aerial is three years old. There is quite a bit of development out there.

GAROFALO The development to the west, is it mostly "SF-5" or "SF-20"?

MILLER It is all single-family residential use, but the zoning is split between "SF-5" and "SF-20".

HERNANDEZ I went through the packet of letters, and I did not have benefit of your map when I looked at my information, but the letters seem to state the main objection is the extension of Sundance into this new area. Is that correct?

MILLER Yes, that would be one of the main objections. The other ones that I have heard is the lots that back up here will be smaller than the lots that are here (pointing to the plat map). They are 8,000 square feet plus; that is what is being proposed.

HERNANDEZ If Sundance were to be extended, give me a rough distance that it will extend.

MILLER About 150 feet or so. It is the length of a lot. As you can see on the plat here, it "tees," and then it would loop around.

HERNANDEZ I don't believe cars could accelerate much in 150 feet. It is not like it is a straight shot through that area.

MILLER Right, this ties directly in, and then loops and wanders around.

SUNQUIST How many outlets are in the development to the west of the street?

MILLER One in the southwest corner, as the preliminary plat shows. There are two outlets out to 143<sup>rd</sup> and another one to be completed out to 13<sup>th</sup>.

MITCHELL Dale, was Sundance platted as a collector street?

MILLER It acts like a collector. I don't know if it was built to collector standard. We don't think it was built to collector standards. It is 64 feet right-of-way.

MCKAY Dale, looking at the drawing here, you are showing Sundance going completely through the project. Do I see that it is going to stop at the east property line of this proposed situation or not?

MILLER We are getting a stub out to the east so that if the property to the east develops it would continue on.

MCKAY Theoretically that could be misused as a collector?

MILLER Yes, if it develops that way you could stay on Sundance and wind your way through and go all the way.

PHIL MEYER, BAUGHMAN COMPANY We have been meeting with the representatives of the Homeowners Association, I may defer some of my comments until after they speak.

#### **TAPE CHANGE**

MEYER The plat through there has a floodplain that comes through that is basically separating the project from 13<sup>th</sup> Street.

BISHOP See that open space?

MEYER This is a detention pond for our Subdivision, and this is another amenity pond, but it is down in the floodplain and will not be used for detention, but it is pretty much limiting our ability to access 13<sup>th</sup> Street. We are crossing it one time, and that is why we don't have a second point of access here.

MCKAY Phil, you are proposing the configuration of Sundance, I can't see from here, can you explain this?

MEYER We just connected to it; the street stub as it came to our property line. We felt it was appropriate to connect to it when we went through the preliminary plat. We were requested to also do a street stub to the east which we supplied on the final plat.

MCKAY So theoretically that street makes a big jog and a "s" shape type thing?

MEYER Yes.

BOB KAPLAN, 430 N. Market, I am representing the Savannah Home Owners Association. That is the subdivision to the west. I represent the official Savannah Homeowners Association. They do not oppose the requested zoning. Basically, what we have had is two productive meeting with the developers, and with Phil Meyer, and we have some mutual concerns. They are more platting issues than they are zoning issues, and you will hear from us again at the time of platting. Basically, the issue is the connection of the Savannah Sundance street with the Stone Sundance street. We neither want, nor do we need, all of that construction traffic, particularly during the development phases. The developers have agreed that, for now, during the construction process, during the development phase, that we will prohibit access from Savannah into Stonebridge. We have some issues with the retention of a tree line, but Savannah wants to keep them. We have discussed some lot sizes, infrastructure issues, front-loading the sewer instead of rear-loading the sewer. We are okay with the zoning today.

HERNANDEZ What is the average price of the homes in Savannah?

KAPLAN Roughly \$400,00 - \$450,000.

BISHOP You have reached some accommodation in terms of not allowing access through Sundance, through the development. Can you define limiting access for me?

KAPLAN We have gone further than I have put before you. We have been working with the fire department in terms of how we might prohibit access, and that would be a barricade at the east end of Sundance as it goes into Stonebridge, and that could take a number of forms. It might be a siren activated gate. There is going to be emergency access. That could be a barricade with a lock; it could be siren activated, it could be a chain on a temporary basis. We did approach Sedgwick County Fire Department. We can present a letter today that they are okay with it.

BISHOP Can you define temporary?

KAPLAN Throughout the Stonebridge Addition development. We haven't said to completion. The time frame we still need to work out. It may be a number of years. Stonebridge will not develop overnight. The concrete, lumber, contractors and homebuilders coming out there will extend for a period of years. We are satisfied that we will leave the final solution open. If this had been a platting session we would have had to have been prepared with details to give to you, but this is not a platting session. We hope at the time the final plat is submitted that I will be able to present the points upon which we will be in agreement.

BISHOP Does this mean the standards for Sundance on either side of the hedge row will be the same? The width of the street?

KAPLAN I can't tell you what the developer is going to want to do with Sundance east of Savannah, but our street is a residential street. We are certainly not going to change or make any improvements to our street. I do agree that it will probably be used as a collector, and I think that is the concern of the homeowners, but they also believe that we can reach accommodation on how that street will be used now and in the future.

MILLER If it platted as an access easement it does not have to be built to public street standards. If it is shown as a public right-of-way, and is intended to be developed as a public right-of-way, then it will be built to public street standards. This may be an issue, I am not sure it is legal to gate a public street, but if the access point is converted to an access easement, then they could gate it, and put the siren activated lock on it and then it would be restricted only to emergency access. That could be something to resolve at platting.

DUNLAP At what point in the C.I.P. is 13<sup>th</sup> going to be paved?

MILLER The year 2006.

MARNELL We are dealing with the zoning to SF-5 and SF-20, those issues referring to Sundance aren't those platting issues?

MILLER Yes, the access issues are going to be addressed at the time of plat.

KYLE STEPHENSON, 1540 FREEDOM ROAD, WICHITA KS 67230 I am the developer of Savannah. We have been working with the Stonebridge developers. I would like to be notified when the development starts happening into Stonebridge. I have 18 lots backing up the Stonebridge. They are about 29,000 square feet and what is being preliminary platted there is 8,000 square feet on the Stonebridge side. It is not enough for me to say I oppose the plat just for that alone, although I do have interest and concerns on how that looks. For the record, the south half of Savannah averages 25,000 square feet, the north half averages 13,000 – 16,000 square feet per lot.

BARFIELD Are you opposed to the zone change?

STEPHENSON No.

MEYER I don't have a rebuttal. We will not fight a temporary emergency access at Sundance, and we will continue to work with them on getting that issue resolved.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **DUNLAP** seconded the motion, and it carried (12-0).

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**7a. Case No.: CUP2002-02 DP258** - Marksland, LLC, c/o Mike Marks (owner); Kemiller Engineering, c/o Kirk Miller (agent); Kaplan, McMillan and Harris, c/o Robert W. Kaplan (attorney) Request The creation of DOROTHY Commercial C.U.P. (f/k/a/ THE FLATCOAT Commercial C.U.P.) on property described as;

and

**7b. Case No.: ZON2002-02** - Marksland, LLC, c/o Mike Marks (owner); Kemiller Engineering, c/o Kirk Miller (agent); Kaplan, McMillan and Harris, c/o Robert W. Kaplan (attorney) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

A tract of land in the Northwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at a point on the South line 114.6 feet West of the Southeast corner of said Quarter Section, said point being on the Northerly right of way line of the proposed highway; First Course, thence West along said Southline 999.8 feet; Second Course, thence Westerly and Northwesterly along a curve of the Northerly right of way line of the proposed highway 837.9 feet; Third Course, thence Northwesterly along said right of way line 1024.5 feet; Fourth Course, thence North 39.0 feet, more or less, to the Southerly right of way line of the Protection Drainage District; Fifth Course, thence Southeasterly along said Drainage District right of way line to the place of beginning. Generally located North of I-235, east of West Street and south of Calvert Street.

**BACKGROUND:** The applicant is requesting the creation of DP-258 Dorothy Community Unit Plan and rezoning to "LC" Limited Commercial for 18.67 acres of property located north of I235, east of West Street and south of Calvert Street. This request supersedes the previous request known as Flatcoat III C.U.P. (See Case History).

Two large parcels are proposed for the C.U.P. Parcel 1, which is 9.78 acres is located on the west half of the site near West Street. Parcel 2 is 8.91 acres. There are no identified users for the parcels. Therefore, the proposed development plan is general and does not show a proposed arrangement of buildings and uses or circulation within the parcels. Requirements for site plan review and general provision requirements, including but not limited to landscaping, architectural consistency, and screening, are intended to ensure the arrangement and internal circulation is suited to the site and reduces its impact on the nearby residential neighborhood.

Proposed commercial uses for Parcel 1 are: animal care, limited; bed and breakfast inn; bank or financial institution; broadcast/recording studio; hotel or motel; medical service; office, general; personal care service; personal improvement service; retail, general limited to a maximum size for a single use of 8,000 square feet; restaurants with no drive-through or drive-in window allowed. Parcel 2 would allow fewer commercial uses than Parcel 1 by limiting it to some of the uses permitted by-right or by Conditional Use in the "GO" General Office zoning district. The commercial uses allowed would be: bed and breakfast inn;

broadcast/recording studio; funeral home; medical service; office, general; animal care, limited; bank or financial institution; personal care service; and personal improvement service.

Both parcels would permit the same range of public/civic uses and residential development. These would include: single-family; duplex; multi-family; church or place of worship; community service; convalescent care; cemetery; day care, limited and general; government service; parks and recreation; and safety service.

*Maximum building coverage is 30 percent. Gross floor area is 35 percent for Parcel 1 and 30 percent for Parcel 2. Proposed setbacks are 35 feet for commercial and 20 feet for residential use. Maximum heights are 35 feet for commercial, single-family and duplex, and 45 feet for multi-family. The number of buildings is unspecified. Proposed signage is three 35-foot freestanding signs along I-235 and one 30-foot sign along West Street. Monument signs along the property line paralleling Calvert Street would be limited to 12 feet in height and 0.5 times lineal frontage.*

The C.U.P. proposes uniform architectural character within each parcel, and Parcel 2 would be required to have residential character. No predominately metal facades would be permitted. Light standards would be limited to 25 feet in height.

Access is proposed from Calvert Street, a local residential street bordering the north of the application area. The site has no direct frontage to West Street. The Protection Drainage Ditch, which is 99 feet wide, separates the site from Calvert Street. The Protection Ditch extends eastward along the northern side of I-235.

The surrounding area to the north is a single-family residential neighborhood with homes built in the 1960s and 1970s and is generally well maintained. Many of these homes have exteriors of wood and brick with gable roofs.

The Southwest Neighborhood Association has expressed an interest in establishing a bike path along I-235 and has requested the developer to participate in providing right-of-way for this path. The neighborhood also expressed a concern that uses be limited in intensity to those permitted in the "NO" Neighborhood Office district.

The site is bounded on the south by I-235. Two large institutional land uses are located to the east/northeast: Cleaveland Traditional Magnet School and the YMCA South Branch. Industrial and commercial uses are located to the west of West Street.

**CASE HISTORY:** The property is unplatted. The applicant submitted a request to develop this property with an 18-acre warehouse, self-service storage facility. This request was denied by Wichita City Council on April 4, 2002. The case was appealed to the 18<sup>th</sup> Judicial District Court, which remanded it back for reconsideration by city council. On August 12, 2003, the city council referred the case back to the Metropolitan Area Planning Commission and the District Advisory Board for reconsideration prior to city council action.

#### **ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5"	Single-family residences
SOUTH: I-235 Right-of-Way; "LI"; "SF-20"; "SF-5"	Highway, industrial, vacant
EAST: "SF-5"	School, YMCA
WEST: "LI"	Industrial, commercial

**PUBLIC SERVICES:** Traffic counts for West and I-235 were estimated at 11,900 ADTs in 1997 and projected to increase to 15,000 ADTs for 2030. Calvert Street is a local residential street with a total of 50 feet of right-of-way. Currently it is a 29-foot paved street, narrowing to 27 feet at Kessler Avenue and has an unpaved segment located between Knight Avenue and Leonine Road. At a gross floor area rate of 0.35 for Parcel 1 and 0.30 for Parcel 2, the site could generate an average daily traffic volume of 7,700 trips per day (6,200 for Parcel 1 and 1,500 for Parcel 2).

Normal public services are available. However sewer service will require a lift station or connection to sewer lines on the south side of I-235.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the *1999 Update to the Comprehensive Plan, amended 1-02*, identifies the general location as appropriate for "low-density residential" development. The Area Treatment Classification Map identifies the general location as part of the "conservation" area, which would be an area that is basically sound but needs to be protected from future structural and market value decline of residential structures.

**Residential Objective II.B** of the *1999 Update* seeks to "minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments" through **Strategy II.B.4** that recommends plan review "to ensure that building placement and height, circulation, signage, screening and lighting for non-residential land uses do not adversely impact residential areas".

**Objective X.E** seeks to "improve the visual appearance of Wichita and Sedgwick County" through the recommendation of **Strategy X.E1** to "prepare detailed design and improvement plans to enhance the visual appearance of key nodal points, special resource or opportunity areas, and major travel corridors in the community, as initially identified on the Visual Form Map". The I-235 corridor is identified as one of the visual corridors (page 68 of *The Wichita-Sedgwick County Comprehensive Plan*). On page 70, it talks about the important role that design review can play in providing "appropriate screening and landscaping" and "in some cases, such as to assist in the harmonious integration of multifamily development near low-density neighborhoods, consideration should be given to review of building forms and materials".

#### **RECOMMENDATION:**

This is a difficult infill site. It is impacted by its location along I-235, but has no direct access to West Street, the nearby arterial street. All access is forced to Calvert, a residential street with neither the improvements to handle commercial traffic nor the right-of-way width to accommodate normal street improvement profiles. In addition, the Protection Drainage Ditch parallels Calvert and requires bridging the ditch to reach the site.

Another major concern was traffic impact. The traditional use of Calvert as a residential collector should dictate that any additional traffic be oriented away from the neighborhood as much as possible, particularly since the proposed development could potentially increase traffic significantly. And, during certain times of the day, the street carries school traffic to Cleaveland Elementary. The location of the main entrance is recommended to be as close to West as possible, within the Access Management Policy guidelines for separation distances.

In general, commercial development would not be in character with the residential development to the north. The neighborhood has expressed a strong preference for residential use or public/institutional uses such as a park or church, requested that any commercial uses be limited to "NO" Neighborhood Office, and requested a bike path.

The developer has responded to these issues by limiting the intensity of commercial uses on Parcel 1, further restricting Parcel 2 to "GO" uses only, and retaining the possibility of residential development as one of the permitted options. The C.U.P. included site development requirements, including but not limited to site plan review, building orientation to I-235, and buffering and screening, to address Objective II.B (protection of residential areas) and Objective X.E (visual corridors). These limitations were intended to make the commercial development more compatible with the neighborhood and keep the more intense uses located nearer to West Street and I-235.

The developer also provided a 15-foot bike path easement along I-235 for future use.

Staff feels the best possible use for this property is not for commercial purposes due to its lack of direct access to West and reliance on access that must utilize a residential street. Yet, staff recognizes that this property hampered by both its location along I-235 and by the development costs for providing public services to the site (streets and sewer particularly) that make low-density residential use less likely. Staff feels higher density residential use would be a good alternative. Higher density residential uses would be permitted by the C.U.P. However, the developer has requested that commercial uses also be allowed, and has included restrictions to reduce the impact of the commercial uses on the neighborhood.

Based upon these recommendations, and the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2002-00003) to "LC" Limited Commercial for Parcel 1 and "GO" General Office for Parcel 2, subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-258), subject to the following conditions:
  1. Access shall be limited to two points, with the primary access near West Street and across from Illinois Avenue or at a mid-block location in conformance to access management policies for separation of streets, and a second point between Knight Road and Leonine Avenue.
  2. The applicant shall guarantee: construction of a decel lane from West Street to the first entrance on Calvert, reconfiguration of the intersection geometry for Calvert at West Street to reduce the turning radius to 90° and allow a center left-turn lane from Calvert to West, paving of the unpaved segment of Calvert, and widening of Calvert to 36-foot back-to-back on Calvert from the first drive entrance to the second drive entrance. A guarantee for traffic signalization at West shall be provided, but this signal shall not be permitted unless warranted by traffic volumes and coordinated with the I-235/West interchange ramp.
  3. General Provision 7 shall add: "Building wall signs except identification signs shall be prohibited on the façade parallel to Calvert Street."
  4. The development of this property shall proceed in accordance with the development plan and building elevations as recommended for approval by the Planning Commission and approved by the Governing Body. Any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
  5. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  6. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
  7. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
  8. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-258) includes special conditions for development on this property.
  9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is predominately developed with single-family residential uses zoned "SF-5" Single-family Residential. The most directly impacted properties are single-family homes located north of the site. Cleaveland Traditional Magnet School is located to the northeast and a large recreation site with

the YMCA is located on the next tract to the east. South and west of the subject area is the I-235 and West Street interchange. There are commercial/industrial uses beyond the site to the west.

2. The suitability of the subject property for the uses to which it has been restricted: The location of the site along I-235 and the development costs for public services to the site (streets and sewer particularly) make low-density residential use unlikely. The property could be developed as zoned "SF-5" with a church, park and several other public/institutional uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Some of the detrimental effects of commercial development such as lighting, noise, and other factors should be mitigated by the requirements of the Unified Zoning Code and the Landscape Ordinance and the recommended conditions of approval for the C.U.P. The increased traffic will impact nearby properties.
4. The length of time the subject property has remained vacant as zoned: The property has been zoned as low-density residential use since it was annexed into the City of Wichita during the 1960s. This is the normal procedure. At any time, the property could have been platted, or a request could have been made to rezone it to a higher intensity district. Records do not indicate any active case being filed to rezone the property, or any plat being filed until 2002. The presence of the Protection Drainage Ditch and the associated difficulty of providing streets and sewers were probably significant reasons this property was bypassed.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The houses along Calvert Street will be impacted by increased traffic hazards from the development. The hardship imposed on the applicant is the need for the development intensity to offset development costs. The developer has agreed to provide a 15-foot easement for a future bike path as a potential benefit to the neighborhood and community.
6. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" rather than commercial. This makes use limitations and site design requirements such as landscaping and buffering, screening, lighting, and signage restrictions, critical for following the policy guidelines for limiting the impact of nonresidential development when located near residential areas or along visual corridors.
7. Impact of the proposed development on community facilities: Calvert Street will need significant improvements to accommodate the increased traffic volumes.
8. Opposition or support of neighborhood residents: Southwest Neighborhood Association has indicated they are in opposition to commercial use more intense than "NO" Neighborhood Office zoning and to prohibit storage of any type, car washes, car lots, restaurants, hotels/motels, boarding houses, correctional facilities, adult businesses, and liquor stores. They also asked that no "24-hour" businesses be allowed and that businesses be limited to usual business hours (i.e. 8-5). They also indicated opposition to traffic being allowed to travel through the local residential streets and asked that access points be minimized and placed at mid-block locations, preferably between Illinois and McComas, and other north-south streets but not at All Hallows Avenue. The neighborhood requested that the bike path be located along the I-235 site corridor.
9. A consideration of the recommendations of professional staff: This infill site is impacted by its location along I-235, but has no direct access to West Street, the nearby arterial street. All access is forced to Calvert, a residential street with neither the improvements to handle commercial traffic or the right-of-way width to accommodate normal street improvement profiles. In addition, the Protection Drainage Ditch parallels Calvert and requires bridging the ditch to reach the site. Another concern was the increase in traffic volumes. To respond to these concerns, the location of the main entrance is recommended to be as close to West as possible, within the Access Management Policy guidelines for separation distances, and other transportation improvements were recommended.

While commercial development would not generally be in character with the residential development to the north, the proposed limitations on uses were intended to eliminate some of the more intense commercial uses. Additionally, the C.U.P. requirements were intended to reduce the full impact of commercial development by buffering and screening the uses along the northern residential area; instead orienting the development to the I-235 frontage. In particular site plan review and building orientation are designed to address Objective II.B (protection of residential areas) and Objective X.E (visual corridors). The additional limitation of Parcel 2 to "GO" uses only was intended to scale back the intensity of development and keep the more intense uses nearer to West Street.

DONNA GOLTRY, Planning staff presented the staff report.

MCKAY out at 2:51 p.m.

BOB KAPLAN, 430 N. MARKET, This matter has been going on since 2001. We filed initially for "GC" General Commercial, not "LC" Limited Commercial, because we do not have direct access to West Street. There are provisions in the Code to avoid the direct access issue, and they asked if I would amend to the "LC" Limited Commercial from the "GC" General Commercial and still present the same plan, which we did. We did amend to "LC" Limited Commercial. The matter went to Planning Commission and was approved. The District Advisory Board also approved it and recommended approval of the "LC" Limited Commercial and recommended approval of the C.U.P., and the mini-warehousing.

At the City Council hearing there was a motion to deny based on neighborhood objections. I recommended an Appeal and we went to court and the judge took the matter under advisement and rendered a decision in which he remanded the decision to the City Council. The judge found that the action taken by the City Council was unlawful and that it could not stand, and asked City Council to reconsider the matter. When it came back to the Council, Mr. Gray, decided that it ought to run through the process again, and he remanded it back to the Planning Commission and also to the District Advisory Board.



I lost my mini-warehouse developer; he gave up. We turned to another marketing technique and Kirk Miller has come up with a two-parcel C.U.P. which is predominantly "LC" Limited Commercial. Again, at staff's request we amended downward, again, on Parcel 2, which is the eastern most Parcel. I have been told, by my applicant, that although the application was for "LC" Limited Commercial, he will accept "GO" General Office.

So we will take "LC" Limited Commercial on Parcel 1, the West Street Parcel, and we will take "GO" General Office on Parcel 2. The neighborhood wants "NO" Neighborhood Office. There is no practical, feasible way, economic way that my client can take 18-plus acres and develop in a "NO" Neighborhood Office district.

GAROFALO The "GO" General Office does offer more commercial uses on that Parcel 2 than what you have agreed to than on this plan.

KAPLAN We have delineated the uses to which it will be restricted under the C.U.P. Those are the uses we have requested approval of. We have gone through and itemized those uses that we want.

GAROFALO If it was approved for "GO", then according to the book, here, you would have more commercial uses than what you agreed to in the C.U.P. On Parcel 2, if it is "GO", will you still limit it to these uses listed?

KAPLAN Yes.

GAROFALO Is there anyway to limit the access to one opening and have a cross-lot connection there?

KAPLAN I think it will be difficult. That is why we tried the mini-storage, there, because it had limited traffic. We really need those two accesses.

BISHOP The C.U.P. plan only indicates one access.

KAPLAN It should indicate access control except for two access points.

KIRK MILLER We have two shown, one off Parcel 2 and one off Parcel 1. We have an area where we are saying one access would be permitted, and we have a stretch there (pointing to the area between Calvert Court and McComas) because there question as to where that location should be.

BISHOP So you have complete access control except one opening?

KIRK MILLER Right, one opening in the front part and one opening in the back.

HENTZEN Down on the southeast end of Calvert Street, there is an area there that looks like it has pot holes very deep. It doesn't go very far, but it goes to another paved street. Who owns that street is that? Is that a city street?

KIRK MILLER That is a city street. There is a half block that is not paved, and one of the staff requests is that we pave it; and it is right where we plan have our opening.

MILLER Right, we will be paving that, yes.

GRANT TIDEMANN, 150 N MARKET I am a broker for J.P. Weigand and Sons. My job is to market the property once we get it zoned. Weigand does a survey every year, and the office market in the southwest part of Wichita traditionally has been a small office use. And I think it will be difficult, in my position, to market office in this location. It will be helpful to the developer to have other uses.

BISHOP With the list of permitted uses, there is an agreement that these parcels would be restricted to these uses. I do not see liquor store or alcoholic beverage sales?

TIDEMANN Yes, we have worked those uses out with the engineer and the developer and the neighborhood.

PATRICIA HOUSER, 3927 W. 32<sup>nd</sup> St. South, Wichita, KS 67217, Vice President of the Southwest Village Neighborhood Association. We are asking MAPC to limit Parcel 1 to "GO" and "NO" for Parcel 2. And the DAB has recommended this. (Pointing to slides of traffic) There are traffic issues, and children's safety is a concern. There are six driveways on the west end of Calvert that will be impacted by the increased traffic. There will be 7,700 cars passing their driveways. This will negatively affect their safety and property values. We have children playing in the street because there are no sidewalks except on Meridian, 31<sup>st</sup>, and West Street. The residences park on both sides of the streets creating a one-lane street; creating congestion on the street during peak times. There will be 11 intersections effected.

BISHOP Under "GO", the uses that are listed are fairly restricted, and do not include a lot of things that I would think that a neighborhood would object to. They have already been excluded out.

HOUSER We would just like to not have "LC"; that is what we are opposed to. We would be okay even with "GO" on the entire portion.

HERNANDEZ You reference these cars. Where did you get these numbers?

HOUSER The staff report.

HERNANDEZ We are talking one car every 6 seconds. I don't even think Towne East gets that much traffic. I don't think these numbers are accurate

HOUSER People can't get out of their driveways now.

DONNA GILLMORE, 3922 Calvert, Wichita, KS 67217 This whole neighborhood is designated as a "conservation area", including the area that he wants to develop, which says that the residential neighborhood is still basically sound, structurally, socially, and marketable, but needs to be protected from future structure and marketable decline. Typically these neighborhoods have an average structure age of a least 30 years and lack some residential amenity features commonly found in newer home areas, such as parks, sidewalks, and such. Commercially generated traffic should not feed directly onto local residential streets. We do not ask that Mr. Marks keep from using this property. We ask that you do not rezone this to "LC", but rezone to more restrictive district.

CLYDE BAILEY, 3435 S. Kessler, Wichita, KS 67217 I have a real concern about the drainage down there. In 1989 I had water seeping up through the hairline cracks in my basement floor. Then two years later in 1991, we had the same thing, and all the time, the water level in that ditch was rising every year a little bit. The elevation of that ground is quite low. In 1993 we had severe flooding in a number of basements. I called and talked to Bob Jennings from the City, and he came out and talked with me about the ditch. In 1996 they came out and cleaned it out. And before they did, I painted a white mark on a bridge down at West Street to see where the high level water was before the dredged it out. After they got that done, the water level dropped almost two feet. Since that time we have no problems. I got my basement repaired and payment from FEMA. I am concerned that if we have any kind of commercial development over there, this is going to put more drainage in the ditch. The City is going to have to maintain that ditch better.

BOB SHERADEN, 3233 S. Knight, Wichita, KS 67217-1138 I have lived there since June of 1975. I have a long history with this neighborhood. We do not want to deny Mr. Marks a profit or a return on his investment, but not at our expense. This is zoned for residential and we you change it we ask that you remember the conservation area and limit the impact of the change of the zoning on our neighborhood. What we have here is a problem that was uncovered at the warehouse hearing that you had here before you earlier. There is a traffic problem, and will be a worse one if this development is done in this neighborhood. About the height of the signs, make sure they are not too high.

TERRI SHARON, 3914 CALVERT, Wichita, KS 67217 Our expectations for that property have been compromised, because we realize that the price and cost to turn it into a park is out of reach. Our concern is the commercial zoning. Calvert Street was not platted as a connector street for traffic like that. The traffic numbers exclude the everyday neighborhood traffic that goes down the street. It is the only east-west through street for that whole neighborhood section. They are talking about widening Calvert Street. That is right in front of my home, and that will affect my property values. And, it will affect our parking in order to make Calvert a larger street to accommodate the commercial traffic and delivery trucks and such coming into service those businesses, whatever they may be. We are asking that you please consider not approving a commercial zoning; a general office zoning would be better. I have lived here 10 years and I would like you to consider the impact this will have on this neighborhood.

JOE HOOVER, Wichita Public School, We are not pro or con on the zoning. I want to bring up the issue of the traffic, as well about the number of vehicles that might come through and the size of them. Most of our concern may have to be addressed at the time of platting, as far as street width, curves, sidewalks, or whatever is happening there. We would ask that consideration be given to student safety with whatever decision is made.

KIRK MILLER, The neighbors have a couple of concerns that they brought up, and one of them is traffic. We do have restrictions and staff comments that have been applied by Traffic Engineering, and I am sure there will be more at the time of platting. We don't want this site to not be accessible, just as they don't want their neighborhood to be accessible. We would also like a safe intersection, and one of the restrictions or staff comments is to put a petition out there for a traffic signal at Calvert and West Street. And we have agreed to do that as a part of this project.

Another issue was the drainage and it sounds like there has been a maintenance problem in the past. I don't know if there is a whole lot we can do about it, but the drainage will be addressed at the time of platting, as it usually is. I am sure we will have detention ponds and that type of thing out there to keep the situation from getting worse than it already is.

DUNLAP It is said that the orientation of your offices or commercial buildings will be with the front to I-235, what made you decide that?

KIRK MILLER We figured the best visibility for the units or the buildings would be off I-235, so they can see what is actually in there. We don't expect a lot of drive-by traffic on Calvert.

HENTZEN Ms. Houser, the neighborhood would like to see this as a park. Have you as a Neighborhood Association contacted the Park Department?

HOUSER Yes, we did and spoke with Mr. Kupper, and Jamsheed. And we tried to negotiate with Mr. Marks, but they couldn't do anything because we were waiting on the judgment from the court. Mr. Marks offered it to the City for one million dollars and the City couldn't do that.

BISHOP The C.U.P. lists permitted uses and one question is, how does this defer from a protective overlay?

GOLTRY A C.U.P. is required for any "LC" property over 6 acres or more in size. If the request was strictly lower intensity uses than "LC" type uses, they could have done it as a Protective Overlay instead.

BISHOP Within these permitted uses where it says under the "LC" "retail, general 8,000 square feet maximum," could that include self-storage?

GOLTRY No, that is more intensive than the general "LC"-type commercial uses. The "retail, general 8,000 square feet maximum" is the less intensive "NR" standard.

BISHOP There is a mention of a light at Calvert, and I wanted to ask if that would be permissible so close to an interstate?

GOLTRY That is something the Traffic Engineer would have to work out in conjunction with KDOT.

GAROFALO I have a question for Mr. Lang, in reading the material that was sent to us about the court decision. It appears to me most of the same arguments that are being brought up today were rejected by the court.

JOE ALLEN LANG, City Attorney, The court did go through all the factors, here, and basically from the "Golden factors" found that there was not evidence in the record to support some of them, many of them, and so the court did not grant the zoning, but sent it back to hear again, and see what kind of evidence could be presented, and see what factors the Planning Commission and City Council rely on. I think when it is looked at again, if there is litigation again, we will be looking at a new record. I see efforts from staff and the neighborhood to address some of the deficiencies the court found. I think some of the deficiencies are still there for all the factors and it is going to be a weighing from the final decision that is made.

**MOTION:** To approve as the applicant requested with Limited Commercial on Parcel 1 and Parcel 2.

**DUNLAP** moved, **COULTER** seconded the motion. .

DUNLAP There is not a whole lot of difference between what is being requested and what is being agreed to by the citizens, in terms of usage, when you look at the restrictions that they have voluntarily applied. The land can't sit there vacant. It is a waste of land. It needs to be used for something. A park is not going to happen. There are a lot of potential uses that they have agreed not to do. I have a concern if Mr. Tidemann is going to be able to lease this space.

BISHOP I think this is a difficult case. I hope at some point someone can explain to us how administrative adjustments are made, and how the restrictions could be loosened up with a C.U.P. adjustment. I am concerned about the drainage issue and, in this instance, it is an open space area now, and the drainage goes through the land, and that should be adequately addressed. Because of the highway and the residential on the other side--we typically have a much better buffer, and I don't think the drainage ditch serves as that. We are placing LC and a drainage ditch across from the residential property. For that reason, I will not support the proposal. I truly believe that this has been a lack of foresight from our leaders.

**SUBSTITUTE MOTION:** To approve the application as staff recommended and the applicant agrees to have General Office on the east, on Parcel 2, and Limited Commercial on Parcel 1.

**GAROFALO** moved, **BARFIELD** seconded the motion, and it carried (7-4). **BISHOP, DUNLAP MITCHELL and MARNELL, opposed**

8. **Case No.: CUP2003-49 DP234 Amendment #1** - Consolidated Greenwich 21, LLC (owner); Professional Engineering Consultants, P.A., c/o Rob Hartman (agent) Request Amendment to The Regency Lakes Commercial C.U.P. on property described as;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 1 and Reserve A, Regency Lakes Commercial, an Addition to Wichita, Sedgwick County, Kansas. Generally located On the northwest corner of 21<sup>st</sup> Street North and Greenwich Road.

**BACKGROUND:** The applicant is requesting to reconfigure the parcel boundaries and add two parcels to DP-234 Regency Lakes Commercial Community Unit Plan. This is a 63 acre tract located between 21<sup>st</sup> Street North and K-96 on the west side of Greenwich. The amendment also would increase sign heights for freestanding signs on K-96 and adjust other signage provisions, and make minor modifications to other C.U.P. general provisions.

The C.U.P. has two large parcels on the western portion of the site, Parcel 11 (15.79 acres) and Parcel 12 (18.11 acres). Ten smaller parcels range from 1.09 to 1.67 acres in size. Seven of the smaller parcels are located along Greenwich, and three are located in the interior of the site but closer to the K-96 right-of-way. Maximum building coverage and maximum gross floor area are 30 percent on all parcels; maximum building height is 35 feet throughout the C.U.P. A "proposed landscaped waterway" has been relocated from the south half of the western edge of tract to a drainage area in the center of the site. The developer proposes to use drainage areas as water features and locate them between the parcels along Greenwich and the two large parcels.

The original C.U.P. also was designed to allow development with "large-scale retail uses" serving a regional or sub-regional market on the two main parcels. However, approximately 75 percent of the C.U.P. was zoned "LI" Limited Industrial and permitted to be developed with industrial uses as an alternative. Industrial use is no longer an emphasis for the development but is retained as a possible use.

The original C.U.P. provided separate setbacks for industrial and commercial uses. Amendment #1 collapses the setbacks to a uniform 35-foot setback along the arterial streets, the west property line, and the front setback of Parcels 7-10. Setbacks for Parcels 3, 4, and 6 along the entrance drives would be 15 feet.

Architectural compatibility is altered to remove the requirement to use the same predominate exterior building materials for retail use on all parcels and is replaced by a requirement for consistency in lighting and landscape palette, and prohibiting metal as a predominant material on a façade.

Freestanding signage along Greenwich and 21<sup>st</sup> Street North is requested for 20 feet in height and 48 square feet in size except for three shopping center identification signs that would be 30 feet in height and 250 square feet in size.

The applicant has requested taller signage for three signs to a maximum height of 45 feet and size of 325 square feet along K-96. The current C.U.P. allows two 35-foot tall signs along this frontage. Staff, however, recommends that this signage be limited in height to a maximum of 20 feet above the base of the adjacent K-96 roadway.

The applicant has requested to allow up to five signs for the east elevation on buildings over 75,000 square feet in gross floor area in Parcel 12. One sign with a corporate logo only would be allowed to be up to 48 feet in height with a maximum of 150 square feet in size. Parcel 11 requests the same type of additional wall signage was for the north and east façades. This differs from the Sign Code that limits the total number of building wall signs to three per building elevation and the maximum height of building wall signs to 48 feet.

K-96 borders the property on the north and an industrial park is located on the north side of K-96. The property to the east includes a tract zoned "SF-5" that is a cemetery along K96 and a 20-acre commercial property zoned "LC" on the northeast corner of Greenwich and 21<sup>st</sup> Street North. A bank is located on this tract and the remaining area is undeveloped. The southeast corner of Greenwich and 21<sup>st</sup> Street North is zoned "LC" for a narrow strip along 21<sup>st</sup> and the remainder of the tract is "SF-5". The property directly south is zoned "LC" at the corner and "SF-20" for the remainder. MAPC recently recommended approval for a new commercial C.U.P. on this corner (DP-266 The Woodlands C.U.P.). The property to the west is developed with an existing single-family neighborhood, Regency Lakes.

**CASE HISTORY:** The amendment area is platted as Regency Lakes Commercial Addition, recorded June 15, 1999. A replat has been filed. Wichita City Council approved DP-234 Regency Lakes Commercial C.U.P. on October 27, 1998. It superseded a development agreement approved for the property in 1995.

#### **ADJACENT ZONING AND LAND USE:**

NORTH: "LI"	K-96, industrial park
EAST: "LC", "SF-5"	Vacant, bank, cemetery
SOUTH: "LC", "SF-20"	Vacant, suburban estate
WEST: "SF-5"	Single-family residential

**PUBLIC SERVICES:** 2002 traffic counts for 21<sup>st</sup> Street North were 4,241 cars per day; for Greenwich counts were 5,045 cars per day. The 2030 traffic projection for Greenwich from 17<sup>th</sup> to 21<sup>st</sup> Street North was 14,500 vehicles per day. The 2030 projection for 21<sup>st</sup> Street North was 22,000 vehicles per day. However, these projections do not account for proposed and likely new developments that are being discussed in this vicinity. These developments would likely have increased the projections for traffic volumes significantly. Another issue is whether the K-96 interchange would be expanded from its current half interchange to a full movement interchange.

21<sup>st</sup> Street North is improved as a four-lane arterial street with center left-turn lane. Greenwich is a two-lane arterial with short center left-turn lane. Greenwich is included in the C.I.P. for widening in 2010. The C.U.P. does not change the number of access points but repositions the openings to accommodate the parcel boundary shifts.

Normal municipal services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "commercial" development. The C.U.P. amendment is in conformance with the *Comprehensive Plan*.

**Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the general recommendations of the *Comprehensive Plan*, objectives and land use locational guidelines. The changes affecting adjacent land uses is the reduced buffer area from relocating the waterway originally placed between the development and the residences to the west.

The Access Management Policy calls for a traffic study to be conducted when a proposed use generates more than 500 trips in the peak hour. If this site develops with retail uses, which are permitted in all parcels, an average daily traffic volume of 33,754 trips could be generated with 3,375 peak hour trips.

**RECOMMENDATION:** Based upon these recommendations and the information available prior to the public hearing, staff recommends the request be APPROVED subject to replatting within one year and subject to the following conditions:

1. A traffic study shall be submitted and reviewed prior to approval of the replat of the Wichita City Council.
2. Modify General Provision #7 to require distance between project identification signs and 20' monument signs to be no less than 75 feet apart. The height of monument signage for a maximum of three signs located on the K-96 frontage shall be allowed up to a height of 20 feet above the base of the adjacent K-96 roadway. Maximum height of all other monument signs on the K-96 frontage shall be 20 feet.
3. Limit the maximum amount of building wall signage on buildings over 75,000 square feet to no more than 1,200 square feet per elevation.
4. Provide a building setback of 75 feet along the western boundary of Parcel 12 and the southern 236.99 feet of Parcel 11.
5. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.

6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: K-96 borders the property on the north and an industrial park is located on the north side of K-96. The property to the east includes a tract zoned "SF-5" that is a cemetery along K-96 and a 20-acre commercial property zoned "LC" on the northeast corner of Greenwich and 21<sup>st</sup> Street North. A bank is located on this tract and the remaining area is undeveloped. The southeast corner of Greenwich and 21<sup>st</sup> Street North is zoned "LC" for a narrow strip along 21<sup>st</sup> and the remainder of the tract is "SF-5". The property directly south is zoned "LC" at the corner and "SF-20" for the remainder. MAPC recently recommended approval for a new commercial C.U.P. on this corner (DP-266 The Woodlands C.U.P.). The property to the west is developed with an existing single-family neighborhood, Regency Lakes.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and "LI" and will be developed with uses that are consistent with these districts.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The main impact is to increase the height of signage, particularly for the three monument signs along K-96, and for the corporate logo building wall sign requested to be 48 feet in height for each building over 75,000 square feet. These corporate logo signs will not face residential use, and recommended height limit for the monument signs on K-96 is designed to reduce the sign impact on the adjacent residential area to the west. The recommended limit of 1,200 square feet of building wall signage is the same amount permitted by Sign Code, while allowing flexibility in distributing the signage among five rather than three signs per elevation. Another change is to relocate the drainage reserve from the western edge of Parcel 12 and the southern portion of the western edge of Parcel 11 to the interior of the site. Also, the screening wall would be closer to the adjacent residences. This can be mitigated by having a wider setback on this site, as requested, and by the 50-foot drainage reserve on the adjacent residential property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed development is in conformance with the "Land Use Guide, as amended 1/02" of the *1999 Update to the Comprehensive Plan* designation for "commercial" development.
5. Length of time the land has been vacant as currently zoned: The property has been currently zoned and approved as a C.U.P. since 1999.
6. Impact of the proposed development on community facilities: The revisions are intended to facilitate the development of the property as a large-scale retail commercial development. Development will add significant traffic to 21<sup>st</sup> Street and Greenwich, and place pressure on making improvements to Greenwich. Other possible transportation improvements include need for signalization larger or more turn lanes, longer accel/decel lanes. Another impact would be pressure for a full interchange at the K-96 off-ramp. These issues are best addressed through a traffic study.

DONNA GOLTRY, Planning staff presented the staff report and discussed DAB recommendations.

BARFIELD I have two issues. It states here in the DAB memo that Mr. Laham feels that it would be unfair for him to be assessed half of the traffic study cost, and secondly the requirements for the signs are the 75 feet spacing. Why are we making amendments?

GOLTRY That was the recommendation (for allowing some of the signs to be spaced at 75 feet rather than 50 feet) contained in the staff report. In a Community Unit Plan, we can alter signage provisions. But, we try to stay in alignment with the Sign Code requirements as much as possible. The Sign Code requires a minimum spacing of 75 feet, which is what staff based its recommendation on. DAB recommended allowing it to be reduced to 50 feet.

DUNLAP On Condition #3--limiting the maximum amount of building wall signage on the north for buildings 75,000 square feet no more than 1,200 square feet for elevation?

GOLTRY That condition should be taken within the context of the entire C.U.P. document, which has more detail on the wall signage requirements. What they want to be able to do is--normally a single user is allowed 1,200 square feet per building façade--they want to be able to divide that amount of wall signage into five signs instead of three.

DUNLAP That may be a restriction that they may not want to live with depending on the shape of the building.

GOLTRY According to the plans for the first building, the amount of wall signage is under the amount allowed by this condition.

GEORGE LAHAM, applicant, (speaks away from podium and shows layout and signs to commissioners).

BARFIELD Are you in agreement with the Traffic study?

LAHAM Mr. Lackey asked me to do this and we will.

ROB HARTMAN, P.E.C. Originally the C.U.P. was submitted with the height on the two large parcels at a maximum of 45 feet and with a new elevation of a proposed user on one of the Parcels their building extends up to 48 feet so I would like to increase that height from 45 feet to 48 feet.

MARNELL The cost of \$7,500 for the traffic study. That is not part of staff recommendation, is it?

GOLTRY We did not specify the traffic study dollar amount.

MARNELL Who else will be assessed this cost?

GOLTRY Woodlands C.U.P. across the street to the south.

MARNELL Will they get a rebate from on the other side of Greenwich in the future?

GOLTRY Traffic studies are required now as part of Access Management Policy. If the developments on the other side come in subsequently to request approvals, yes they might be asked to contribute.

STEVE LACKEY Director of Public Works Mr. Laham and the development to the south of him happen to have a unique opportunity to be able to plan to their own development. The Access Management Policy calls for this, I did not take into account. When we do this, I wanted to develop a document that is a map into the future of how this area is going to be developed. I would like to know what all the improvements are going to cost and how much of these improvements are going to be shared with the project. If left up to staff, we can guess. But there may be another way to save the money by having a better plan done in advance of development. Is this a unique request? I think it is the kind of request you will see in the future, and no more money than we are talking about would be a good investment.

BARFIELD We were advised that there was not going to be any upgrade to Greenwich until 2010. Are you saying this might be revised?

LACKEY I think it will demand a change in the date because of the new development. We will have to move this date up. I would like to think we can get out ahead of it to do the improvements before the businesses are developed.

DUNLAP Do we have the ability to do this traffic study, and assess the northeast and southeast corners as well?

LACKEY I don't think we will (assess the northeast and southeast corners). We will require them to do the infrastructure uses. Let's take, for example, one or two--that is a question. Do we need more signals? If we can develop a criterion for cost sharing the \$7500, whether we get that back or not, the bigger picture is the \$400,000 turn lanes.

DUNLAP What I am hearing coming out here are regional retailers (doing the study to) just going to K-96. We need to go to 254. I have seen these things come, and this is happening fast, and one of the stores I have heard about is a large Target store. They employee 400-500 people and we want to put them on a two lane road? And I don't know how your department is going to keep up, and how will up move this up in C.I.P.?

LACKEY We have growth issues all over town and this is a larger example of that.

LAHAM We agree with what you are saying. We do want to have planning for this site, and I do agree that the cost needs to be spread, and we are ready to move on. As important as anything, one of the retailers that we are working with is a 200,000 square foot retail that will spend \$25 million here and will be a great development here. They are not asking for tax abatement and one thing they want, they really feel they need, is for Greenwich to be improved.

**MOTION:** To approve subject to staff recommendations as modified by the DAB recommendations, and to increase the height of buildings on Parcels 11 and 12.

**BARFIELD** moved, **JOHNSON** seconded the motion, and it carried (10-0-1) **MCKAY** abstains not here for full discussion.

9a. **Case No.: CUP2003-45 DP194 Amendment #3** - Homer Morgan (owner/applicant); David Udden (agent) - Request Amendment to The Mediterranean Plaza Commercial C.U.P. on property described as;

and

9b. **Case No.: ZON2003-43** - Homer Morgan (owner/applicant); David Udden (agent) - Request Zone change from "GO" General Office to "LC" Limited Commercial on property described as;

Lot 1, Block 1, Home Design Center 3rd Addition, Wichita, Sedgwick County, Kansas. Generally located At the northeast corner of 29<sup>th</sup> Street North and Penstemon

**BACKGROUND:** The applicant requests an Amendment to Parcel 3 of DP-194 Home Design Center CUP and a zone change for the subject property from "GO" General Office to "LC" Limited Commercial. The subject property is located at the northeast corner of 29<sup>th</sup> Street North and Penstemon and is undeveloped.

The surrounding area is characterized by commercial uses along the Rock Road and K-96 corridors and residential uses in the Tallgrass neighborhood. The properties to the west and north are zoned "LC" Limited Commercial and "GC" General Commercial and are developed with various commercial uses. The property to the east is zoned "MF-18" Multi-Family and is undeveloped. The properties to the south are zoned "SF-5" Single Family and are developed with single-family residences and a church.

Parcel 3 is zoned "GO" General Office, the CUP permits all uses allowed in the "GO" zoning district. The applicant proposes to rezone Parcel 3 to "LC" Limited Commercial and to permit the following uses: general office; office/warehouse; professional office; furniture, carpet, lumber, plumbing, and similar furnishings; appliances, equipment, and fixture supplier outlets; light commercial uses limited to home/office supply; decorating, construction material, and design store; restaurants; and specialty retail sales. The applicant proposes no other changes to the CUP.

The CUP currently requires a 10-foot landscape buffer along 29<sup>th</sup> Street North consisting of a three-foot high berm landscaped with trees, shrubs, and grass. The CUP also requires a six - to eight-foot high masonry wall on the east property line. Building setbacks of 35-feet are required along the east property line and along Penstemon, and a 50-foot building setback is required along 29<sup>th</sup> Street North. Access to 29<sup>th</sup> Street North is limited to one opening.

In recognition of the subject property's proximity to low-density residential uses, the zoning and uses permitted on the subject property were limited to office uses when the CUP was originally approved in order to improve compatibility of the commercial uses in the CUP with the nearby residential uses. In order to maintain compatibility while allowing additional commercial uses to encourage development of a vacant commercial property, planning staff recommends several conditions of approval pertaining to permitted uses, signage, building materials, and landscaping. Planning staff recommends approval of the applicant's proposed uses with the exception of office/warehouse, which is not permitted by right in the requested "LC" zoning district, and drive-in or free-standing drive-thru restaurants, which generally are incompatible with low-density residential neighborhoods due to the traffic, noise, trash, and light they generate. Planning staff also recommends that the list of permitted uses use terms defined by the Unified Zoning Code rather than the proposed terms in order to assist with future implementation of the CUP. To mitigate the visual impact of signage on nearby residences, planning staff recommends that signage be permitted per the "NR" Neighborhood Retail zoning district, which permits shorter and smaller signs than the "LC" zoning district. To ensure compatibility of building design with surrounding residential areas, planning staff recommends that buildings on the subject property be constructed of materials consistent with the residences in the area (e.g., masonry, stucco, wood, etc.). To improve the visual appearance of commercial development on the subject property, planning staff recommends that the subject property be developed with a landscaped street yard and parking lot screening along Penstemon and a landscape buffer along the east property line.

**CASE HISTORY:** The subject property was rezoned (Z-2764) to "R-5" General Residence (now "MF-18 Multi-Family") on April 1, 1988. The subject property was rezoned (Z-2978) to "BB" Office (now "GO" General Office) and DP-194 Home Design Center CUP on April 27, 1990. The subject property is platted as Lot 3, Block 1, Home Design Center Addition, which was recorded April 23, 1990.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"GC"	Restaurant
SOUTH:	"SF-5"	Single-family residences
EAST:	"MF-18"	Vacant
WEST:	"LC"	Animal care

**PUBLIC SERVICES:** The subject property has access to Penstemon, a local commercial street, and 29<sup>th</sup> Street North, an arterial street currently being widened to a four/five lane street. Current traffic volumes on 29<sup>th</sup> Street North are approximately 11,500 vehicles per day. The 2030 Transportation Plan estimates that future traffic volumes on 29<sup>th</sup> Street North will increase to 14,000 vehicles per day and recommends the current street widening project. Since an access drive to 29<sup>th</sup> Street North cannot be separated from Penstemon by at least 400 feet, the Access Management Policy recommends that the access drive to 29<sup>th</sup> Street North for the subject property be limited to right turns in and out only.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. As recommended for approval, the request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the rezoning to "LC" Limited Commercial and the amendment to Parcel 3 be APPROVED as follows:

**Parcel Number 3**

Permitted Uses: Automated teller machine; bank or financial institution; construction sales and service, limited to retail establishments only; medical service; general office; general retail; personal care service; personal improvement service; and restaurant, excluding drive-in or free-standing drive-thru restaurant.

Net Area: 63,008 square feet (1.45 acres)

Maximum Building Coverage: 18,902 square feet (30% maximum)

Maximum Gross Floor Area: 23,000 square feet (36.5% maximum)

Maximum Building Height: 35 feet

Parking: See General Provision Number 8.

Setbacks: See General Provision Number 8 and plan.

Signs: Permitted per the Sign Code for the "NR" Neighborhood Retail zoning district. Window display signs are limited to 25% of the window area.

- Architecture: All buildings shall share uniform architectural character, color, texture, and the same predominate exterior building material, as approved by the Director of Planning prior to the issuance of a building permit. Building walls and roofs must have predominately earth-tone colors, with vivid colors limited to incidental accent, and must employ materials consistent with surrounding residential areas (e.g., masonry, stucco, wood, etc.).
- Landscaping: In addition to the landscape buffer along 29<sup>th</sup> Street North required by General Provision Number 14 and the street trees required by General Provision Number 15, a landscaped street yard and parking lot screening shall be provided along Penstemon and a landscape buffer shall be provided along the east property line.
- Access: The access drive to 29<sup>th</sup> Street North shall be located no closer than 200 feet from the right-of-way line of Penstemon and shall be limited to right turns in and out.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by commercial uses along the Rock Road and K96 corridors and residential uses in the Tallgrass neighborhood. Commercial zoning and uses primarily are located north of 29<sup>th</sup> Street North, and residential zoning and uses primarily are located south of 29<sup>th</sup> Street North. Since the subject property is separated from existing residential uses by 29<sup>th</sup> Street North and is located at the edge of a major commercial development area, the request is consistent with the zoning, uses, and character of the neighborhood.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, and the additional recommended provisions of the CUP should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
3. The length of time the subject property has remain vacant as zoned: The subject property was zoned "GO" General Office in 1990 and has remained vacant as zoned since that time. Given the primarily retail nature of uses in the immediate vicinity, allowing additional commercial uses should assist with development of the vacant property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. As recommended for approval, the request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated if the access drive to the subject property on 29<sup>th</sup> Street North is limited to right turns in and out only.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (12-0).

10. **Case No.: CON2003-34** – Penny S. Roths Request Sedgwick County Conditional Use for a kennel operation seeking a boarding, breeding, and training kennel on property described as;

The North 370 feet of the west 1317 feet of the Northwest Quarter of Section 23, Township 28 South, Range 2 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas. General Location: At the southeast corner of 47<sup>th</sup> Street South and 127<sup>th</sup> Street East.

**BACKGROUND:** The applicant is requesting consideration for a Conditional Use to allow kennel facilities for boarding of dogs and cats. The Unified Zoning Code, applied to the site's "RR" Rural Residential zoning, requires a Conditional Use for a kennel for training/ boarding/breeding. The property is located on the southeast corner of the 47<sup>th</sup> Street South – 127<sup>th</sup> Street East intersection. The site is located in an unincorporated area of Sedgwick County

The site is an unplatted 8.8-acre tract, minus proposed dedication of street ROW from the site's gross size of 11.2- acres. The application area and all surrounding properties are zoned "RR" Rural Residential. Much of the area surrounding the application area is in agricultural fields. One neighboring residence lies approximately 270-feet north of the proposed kennel site and another neighboring residence lies approximately 800-feet north of the proposed kennel site. Beyond these residences and north of them are another 12-14 large tract residences approximately ½ mile to 1 mile away. Large tract residential is not infrequently scattered along and off of 47<sup>th</sup> Street South, beginning ½ mile east (to the Butler County line) and ½ west (to the Wichita City limits) of the proposed kennel. The nearest residences south of the site are approximately 1 mile away.

The application area is well screened to the south and west by mature hedgerows. The application area is developed with a primary single-family residence, a garage and a barn. The applicant proposes to build 2 kennels with attached runs, a maximum size of 60-feet x 24-feet. The two kennels will be insulated, have heating and air, have fencing around the kennel area and house up to 56 dogs. The applicant intends to construct a fenced outdoor exercise area and fence around the 47<sup>th</sup> Street South – 127<sup>th</sup> Street East frontage. The applicant also intends to build a separate, smaller building for boarding up to 30 cats. The applicant has stated that there will be no breeding of cats or dogs on the site. The owner plans to live on site.



**CASE HISTORY:** The property is an unplatted tract.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR" Rural Residential Residences	Agricultural
EAST:	"RR" Rural Residential	Agriculture
SOUTH:	"RR" Rural Residential	Agriculture
WEST:	"RR" Rural Residential	Agricultural

**PUBLIC SERVICES:** 47<sup>th</sup> Street South is classified as a 2-lane arterial/County highway and is a paved two-lane road on either side of this intersection. The nearest intersection with a traffic count is the Greenwich – 47<sup>th</sup> Street South intersection, which shows 4,000 ATD. Projections of traffic at this intersection into 2030 are estimated to be 7,000 ATD. 127<sup>th</sup> Street E is a dirt/sand Gypsum Township Road. The 2030 *Transportation Plan* does not designate this road as a future arterial. There are no Capital Improvement Projects shown through 2007. There is no sewer at this site, it has a lagoon. The site is in Rural Water District 3.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan identifies this property as being outside the 2030 growth area. The *Wichita-Sedgwick County Unified Zoning Code* (UZC) lists "Kennel, Boarding/Breeding/Training" as a Conditional Use in the "RR" district. The UZC definition of "Kennel, Boarding/Breeding/Training" is "...premises housing over ten adult dogs." The UZC supplementary conditions for this Conditional Use are attached to this report, they include a required separation of at least 200 feet from any outdoor kennel facilities to any neighboring residences, and required screening of kennel facilities located within 600 feet of any adjoining property line.

**RECOMMENDATION:** Dog kennels of a 'reasonable size' are appropriate for rural areas of the County and, with certain restrictions, can be compatible with nearby residences and agricultural operations. Based on the information available prior to the public hearing, staff recommends the application be APPROVED subject to a revised site plan, approved by the Planning Director, demonstrating required distance separation and screening, the site being platted within a year and the following conditions.

- (1) The Conditional Use shall comply with section III.D.6.k. of the Wichita-Sedgwick County Unified Zoning Code, and applicable federal, state, and local requirements (e.g. Chapters 5 and 14 of the Sedgwick County Code).
- (2) The property shall be developed and maintained in accordance with a revised site plan approved by the Planning Director, showing screening, lighting, landscaping, parking, setbacks, easements and all buildings in conformance with the UZC.
- (3) The kennel operator shall have on file proof of rabies vaccinations by a licensed veterinarian and proof of identification and ownership for all dogs five months and older.
- (4) Artificial lighting shall be provided in any indoor run for a minimum of 25 feet of candle illumination. Lighting shall be a minimum of 30 inches above the floor and uniformly distributed.
- (5) Cleaning of the boarding kennel facility shall be performed as often as necessary to maintain sanitary conditions, and a "suitable method" of eliminating excess water from animal housing facilities shall be provided as determined by the Department of Community Health. Interior surface materials shall be constructed of non-porous materials that are impervious to moisture. The indoor kennel facilities shall have fresh air ventilation providing a complete air change at a minimum of five- to six- minute intervals. Exhaust and vents or air conditioning shall be provided when the ambient temperature is 85 degrees or higher.
- (6) Sufficient quantities of food and water shall be provided to keep the dogs in good physical condition. The animals shall be fed at least once daily and provided clean water at all times. Food and water containers shall be located to minimize contamination and shall be cleaned as often as necessary to maintain sanitary conditions.
- (7) All waste materials shall be disposed of in such a manner as to minimize odors and disease hazards. The boarding kennel shall be maintained in a sanitary manner as required by applicable codes (e.g. Chapter 14 of the Sedgwick County Code).
- (8) The animals confined in the boarding kennel shall be maintained in good physical condition, free of infectious diseases and parasites.
- (9) The number of adult dogs and puppies authorized to be boarded shall not exceed 56 at any one time.
- (10) Dogs shall be contained in an enclosed structure/indoor kennel from the hours of 6:00 P.M. to 8:00 A.M.
- (11) The applicant shall obtain all applicable permits including, but not limited to: building, health and zoning.
- (12) The boarding facility shall be open to the unannounced inspection by Sedgwick County of Code Enforcement personnel during reasonable daylight hours to ensure continued compliance with the above requirements.
- (13) No breeding of dogs or cats at this site.
- (14) If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: Properties surrounding the application area are all zoned "RR", and are used for agricultural and large lot residential purposes, giving a "rural" character. Mature existing hedgerows separate uses and property throughout the area. 47<sup>th</sup> Street South is a paved 2-lane County highway that moves traffic through Sedgwick and Butler Counties as well as local residential traffic.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential, which primarily permits large lot residential uses. The site could continue to be used as a residence without the Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Potential noise, odors, and traffic generated by the requested Conditional Use could negatively affect nearby residents. The listed conditions should work to minimize negative effects and allow the use to expire if development and maintenance of the Conditional Use are violated.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use is in conformance with the *Wichita-Sedgwick County Comprehensive Plan*, as the property is currently zoned "RR". The requested Conditional Use is in conformance with the *Wichita-Sedgwick County Unified Zoning Code*, provided that the supplementary conditions of the code are placed on this use.
5. Impact of the proposed development on community facilities: The requested Conditional Use will result in an increase in traffic on 47<sup>th</sup> Street South. Dedication of additional Right of way at the application area is sufficient for future widening, should widening be necessary.

Applicant withdrew case

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11. **Case No.: ZON2003-46** - Charles R. and Connie L. Woodard, Trustees of the Charles R. Woodard Trust and of the Connie L. Woodard Trust and (owners); Marvin Schellenberg (contract purchaser); Professional Engineering Company, P.A., c/o Rob Hartman (agent) - Request Zone change from "SF-5" Single-Family Residential to "TF-3" Two-Family Residential and "LC" Limited Commercial on property described as;

**TF-3 AVALON PARK DUPLEX LOTS**

COMMENCING AT THE SOUTHWEST CORNER OF THE S.W. 1/4 OF SECTION 28, T26S, R1W, OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; THENCE BEARING N 0 DEGREES 00'00"E, ALONG THE WEST LINE OF SAID S.W. 1/4, A DISTANCE OF 855.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING BEARING N 0 DEGREES 00'00"E, A DISTANCE OF 991.23 FEET TO THE SOUTH LINE OF THE KANSAS SOUTHWESTERN RAILROAD; THENCE BEARING S 39 DEGREES 22'14"E, ALONG THE SOUTH LINE OF THE KANSAS SOUTHWESTERN RAILROAD, A DISTANCE OF 2373.93 FEET TO THE SOUTH LINE OF SAID S.W. 1/4; THENCE BEARING S 89 DEGREES 34'48"W ALONG THE SOUTH LINE OF SAID S.W. 1/4, A DISTANCE OF 639.97 FEET; THENCE BEARING N 00 DEGREES 25'12"W A DISTANCE OF 260.00 FEET; THENCE BEARING S 89 DEGREES 34'48" W PARALLEL WITH THE SOUTH LINE OF SAID SECTION 28, A DISTANCE OF 600.02 FEET; THENCE BEARING N 00 DEGREES 00'00" E A DISTANCE OF 594.99 FEET; THENCE BEARING S 89 DEGREES 34'48"W A DISTANCE OF 264.00 FEET TO THE POINT OF BEGINNING. ENCOMPASSING 1,008,100 SQ. FT. OR 23.14 ACRES MORE OR LESS.

**LC AVALON PARK COMMERCIAL LOTS**

COMMENCING AT THE SOUTHWEST CORNER OF THE S.W. 1/4 OF SECTION 28, T26S, R1W, OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; THENCE BEARING N 89 DEGREES 34'48"E ALONG THE SOUTH LINE OF SAID S.W. 1/4, A DISTANCE OF 264.00 FEET TO THE POINT OF BEGINNING; THENCE BEARING N 0 DEGREES 00'00"E, A DISTANCE OF 260.01 FEET; THENCE BEARING N 89 DEGREES 34'48"E PARALLEL WITH THE SOUTH LINE OF SAID S.W. 1/4, A DISTANCE OF 600.02 FEET; THENCE BEARING S 00 DEGREES 25'12"E A DISTANCE OF 260.00 FEET TO THE SOUTH LINE OF SAID S.W. 1/4; THENCE BEARING S 89 DEGREES 34'48"W ALONG THE SOUTH LINE OF SAID S.W. 1/4, A DISTANCE OF 601.92 FEET TO THE POINT OF BEGINNING. ENCOMPASSING 156,252 SQ. FT. OR 3.59 ACRES MORE OR LESS. Generally located Northeast corner of Tyler and 37<sup>th</sup> Street North.

**BACKGROUND:** The applicant is requesting to rezone 26.7 acres north of 37<sup>th</sup> Street North and east of Tyler Road from "SF-5" Single-family Residential to "TF-3" Two-family Residential for 23 acres and "LC" Limited Commercial for 3.6 acres. The requested "LC" is for three commercial parcels that are approximately one acre in size. The "TF-3" is for 34 duplex lots. The density would be three dwelling units per acre, which is within the density range for low-density residential development although duplexes are categorized as medium density residential by definition in the *Comprehensive Plan*.

No restrictions on use or specific site development requirements are proposed for the "LC" lots. Development per code would include some minimum requirements for: screening, landscaping, compatibility setbacks, and signage, but these zoning requirements are less is typically seen for "LC" use within a C.U.P.

Most of the surrounding property is vacant or in suburban use. A request is being heard by MAPC for the property to the south. It is a request for a new 10+ acre community unit plan with requested "LC" zoning, DP-267 Tylers Landing Commercial C.U.P. The area to the north is platted for "SF-5" single-family use, Avalon Park. A railroad right-of-way separates the application area from the "SF-5" subdivision. The area to the south/southeast is being platted for single-family use as Tyler's Landing Second Addition. The land to the west is shown as being in the city of Maize and includes suburban lots and a commercial tree farm/entertainment type of use. Central Maize Middle School is located approximately one-fourth mile from the site.

**CASE HISTORY:** The property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-5"	Vacant
SOUTH:	"SF-5"	Vacant
EAST:	"SF-5"	Vacant
WEST:	"SF-20"	Suburban, agriculture/commercial

**PUBLIC SERVICES:** 2002 traffic counts are unavailable. The 2030 traffic projection (ADT) was approximately 4,000 cars per day for both streets. However, these projections did not account for effect of the Northwest Bypass, which would significantly increase traffic on 37<sup>th</sup> Street North, or traffic from the 100-acre tract school site nearby. Currently, 37<sup>th</sup> Street North is a township road and is unpaved. Tyler is improved as a two-lane county arterial street standard. No improvements are shown on the capital improvement program for the county or city.

Other normal public services are available or are in process of being extended to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development. The proposed density for the "TF-3" are fits within the density range for "low density", but the *Comprehensive Plan* defines the duplex dwelling type as a "medium density" use.

**Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate individual commercial tracts through: shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

**Residential Objective II.A.1** seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. The proposed duplex use offers a different housing type in the vicinity and is placed between commercial and traditional single-family development. The proposed commercial use lacks the C.U.P. requirements typically used to reduce the impact of commercial use on nearby residential use; the requested "LC" zoning bypasses the "NR" or "NO" district which were designed for small commercial uses in close proximity to residential development.

**RECOMMENDATION:** The duplex area is a good fit for its proposed location. It utilizes a triangular portion of land bounded by Tyler Road, 37<sup>th</sup> Street North and the Kansas Southwestern Railroad right-of-way. The property has significant drainage requirements, with about one-fourth of the area to be within drainage reserves. The proposed duplex use conforms to the density levels for low-density residential use but is considered medium density. It is placed as a buffer between traditional single-family use and proposed commercial use.

The three small commercial parcels have a net area of just under one acre each. Ideally they would be zoned "NO" Neighborhood Office or perhaps "NR" Neighborhood Retail. These zoning districts are intended for small commercial uses often used as a buffer between more intense commercial zoning and residential use. The range of uses is limited to those with fewer impacts on nearby residential use.

However, the applicant requested "LC" use with no use restrictions, which would allow a significantly greater range of more intense uses. The commercial area is below the minimum size of six acres of "LC" zoning whereby a Community Unit Plan is required. Yet no special requirements for site design typically use to reduce the impact of commercial use is included in the request.

The potential for traffic conflicts are greatest at the peak afternoon times when traffic from the nearby middle school and retail uses would overlap. A traffic impact study was not completed, although the site would be anticipated to generate between 100-499 trips during the peak afternoon hour with general shopping center type of development. This rate would be significantly higher if restaurants with drive-through windows or other similar high traffic generation uses were located on the parcels. Transportation improvements are included based on projected needs associated with this level of development.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be DENIED. Staff recommends the application be approved for "NR" Neighborhood Retail subject to platting within one year and subject to the following protective overlay conditions:

1. Transportation requirements:
  - a. A site circulation plan for shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
  - b. The applicant shall provide a guarantee for right-turn accel/deceleration lanes along the perimeter of the property and a center turn lane during platting.
  - c. Access points shall be in conformance with the Access Management Policy.
  - d. The developer shall guarantee 6 1/4 percent share of cost for the intersection signalization at Tyler Road and 37<sup>th</sup> Street North.
2. No development shall be allowed along 37<sup>th</sup> Street North until the street is paved to a two-lane county standard.
3. Setbacks shall be 35 feet for front and rear property lines; maximum building coverage shall be 30 percent; maximum gross floor area shall be 35 percent; maximum building height shall be 35 feet.
4. Signage shall be per Sign Code for the "NR" district with the following additions:
  - a. Window display signs are limited to 25 percent of the window, including interior, area.
  - b. No signs shall be allowed on the rear of any buildings.
5. All parcels shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles, and lamps, and etc.), with light poles, including base, limited to 24 feet in height, and reduced to 14 feet within 150 feet of residential zoning. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.
6. Landscaping shall be per Landscape Ordinance; and all parcels shall share a similar landscape palette. The buffer shall be at provided at a rate of one (1) tree per 30 feet for the north property line.
7. A screening wall that is between six (6) feet and eight (8) feet high of concrete/masonry shall be constructed along the northern property line. This solid wall shall be constructed of a pattern and a color that is consistent with the building walls, is of uniform construction for the three parcels, and placed within a five (5) foot wall easement.
8. All parcels shall share similar or consistent architectural character, color, texture, as determined by the

Planning Director. Building walls and roofs must have predominately earth-tone colors, with vivid materials limited to incidental accent, and must employ materials similar to surrounding residential areas. No predominately metal facades shall be allowed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the surrounding property is vacant or in suburban use. A request is being heard by MAPC for the property to the south. It is a request for a new 10+ acre community unit plan with requested "LC" zoning, DP-267 Tylers Landing Commercial C.U.P. The area to the north is platted for "SF-5" single-family use, Avalon Park. A railroad right-of-way separates the application area from the "SF-5" subdivision. The area to the south/southeast is being platted for single-family use as Tyler's Landing Second Addition. The land to the west is shown as being in the city of Maize and includes suburban lots and a commercial tree farm/entertainment type of use. Central Maize Middle School is located approximately one-fourth mile from the site.
2. The suitability of the subject property for the uses to which it has been restricted: While the property could be developed with single-family use, its location along an arterial street with proposed commercial use to the south make the property directly abutting 37<sup>th</sup> Street North less attractive for single-family use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property should be mitigated by the recommended restrictions to lower intensity commercial uses and site the development requirements to buffer the commercial use from the duplex use. The railroad right-of-way should buffer the duplex uses from the single-family uses to the north and northeast.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development. The proposed density for the "TF-3" are fits within the density range for "low density", but the *Comprehensive Plan* defines the duplex dwelling type as a "medium density" use. The proposed use restrictions and site development requirements seek to follow commercial and residential objectives and locational guidelines.
5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the addition of accel/decel lanes and left-turn lanes. Other community facilities are being extended to serve new development in the vicinity. The development, or other residential development in the vicinity, will require paving of 37<sup>th</sup> Street North.

Should MAPC choose to recommend "LC", staff would recommend the following use restrictions: "Uses shall be limited to those permitted by-right in the "LC" Limited Commercial district, and recreation and entertainment, indoor, shall only be permitted by separate Conditional Use approval. No single use greater than 8,000 square feet in size except for a grocery store or drug store shall be permitted. Restaurants shall not have drive-through windows located within 200 feet of residential zoning and order boards shall not be audible from the residential property lines. No auto-serving uses, such as vehicle repair, limited, convenience stores with gas islands, service stations and car washes shall be permitted on Parcels 1, 2, 6 and 7. No overhead doors shall be permitted within 150 feet of residential zoning and shall not be facing any residential zoning district."

Donna Goltry, MAPD distributed the following memo with revised recommendations for consideration:

At the District V Advisory Board meeting held October 6, 2003, the agent for the applicant requested "LC" Limited Commercial zoning limited to "NR" Neighborhood Retail uses except to allow restaurants over 2,000 square feet with drive-through windows. The windows would be prohibited within 100 feet of residential zoning and include the requirement of not being audible at the property line. The agent also offered a condition for consistent signage and agreement with the other recommended conditions.

Staff has reviewed this request and would recommend it be accepted. The PO would provide a buffer between the commercial tracts and the TF-3 Twofamily duplex zoning on the balance of the tract, and would maintain a neighborhood scale of development, modified by the addition of a potentially larger restaurant with a drive-through window.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED for "LC" Limited Commercial and "TF-3" Twofamily Residential subject to platting within one year and subject to the following protective overlay conditions:

1. Transportation requirements:
  - a. A site circulation plan for shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
  - b. The applicant shall provide a guarantee for right-turn accel/deceleration lanes along the perimeter of the property and the fair share of a center turn lane during platting.
  - c. Access points shall be in conformance with the Access Management Policy.
  - d. The developer shall guarantee 6 1/4 percent share of cost for the intersection signalization at Tyler Road and 37<sup>th</sup> Street North.
2. No development shall be allowed along 37<sup>th</sup> Street North until the street is paved to a two-lane county standard.
3. Setbacks shall be 35 feet for front and rear property lines; maximum building coverage shall be 30 percent; maximum gross floor area shall be 35 percent; maximum building height shall be 35 feet.
4. Signage shall be per Sign Code for the "NR" district with the following additions:
  - a. Window display signs are limited to 25 percent of the window, including interior, area..
  - b. No signs shall be allowed on the rear of any buildings.
  - c. All freestanding signs shall be monument type signs and shall share consistent architectural design and character.

5. All parcels shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles, and lamps, and etc.), with light poles, including base, limited to 24 feet in height, and reduced to 14 feet within 150 feet of residential zoning. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.
6. Landscaping shall be per Landscape Ordinance; and all parcels shall share a similar landscape palette. The buffer shall be at provided at a rate of one (1) tree per 30 feet for the north property line.
7. A screening wall that is between six (6) feet and eight (8) feet high of concrete/masonry shall be constructed along the northern property line. This solid wall shall be constructed of a pattern and a color that is consistent with the building walls, is of uniform construction for the three parcels, and placed within a five (5) foot wall easement.
8. All parcels shall share similar or consistent architectural character, color, and texture, as determined by the Planning Director. Building walls and roofs must have predominately earth-tone colors, with vivid materials limited to incidental accent, and must employ materials similar to surrounding residential areas. No predominately metal facades shall be allowed.
9. Uses shall be limited to those allowed in the "NR" Neighborhood Retail district and restaurants over 2,000 square feet in size; restaurants may allow drive-through windows but the drive-through windows shall be no closer than 100 feet from a residential property line and any order boards shall not be audible from the residential property lines.

Please include this information when considering Item #11.

**MOTION:** To approve, subject to staff comments, including the memo, and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (12-0).

12. **Case No.: ZON2003-45** – Fredrick L. & Dianna L. Simmon (applicant); Baughman Company, P.A, (Russ Ewy) Request Sedgwick County Zone change from "RR" Rural Residential to "SF-20" Single-family Residential on property described as;

The SW 1/4, SW 1/4, Sec. 35, Township 26 South, Range 2 West EXCEPT beginning 351.56 feet East of the SW Corner, thence North 364.16 feet, thence Northeast a distance of 353.43 feet, thence in a Northeasterly direction a distance of 190 feet plus or minus, thence South a distance of 478.22 feet to the South Line thence West a distance of 529.72 feet to the point of beginning EXCEPT for roads of right-of-way. Generally located Northeast corner of 29<sup>th</sup> Street North and 151<sup>st</sup> Street West.

**BACKGROUND:** The applicant is seeking "SF-20" Single-family Residential zoning on 33.06 acres located northeast of 29<sup>th</sup> Street North and 151 Street West. The property is currently used for cropland, and is an upside down "U" shape with a single-family residence located on the left out tract. Both 29<sup>th</sup> and 151<sup>st</sup> Streets are sand and gravel roads. It is one mile to the closest paved roads, 21<sup>st</sup> Street and 135<sup>th</sup> Street.

Surrounding property is used primarily for farm ground. There are five homes located within 1/4 mile of the application area. Within a 1/2 mile there are 22 lots of approximately 5-acres in size (Reece Farms Addition). Lot sizes in the area vary from 20 acres and larger, down to 2 acres or so. Water and wastewater services would have to be provided on-site.

**CASE HISTORY:** This property was zoned "RR" with the adoption of 1985 countywide zoning resolution. The applicant has filed a plat for this property that shows 26 lots that are approximately one acre in size.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential; farm ground  
SOUTH: "RR" Rural Residential; residences, farm ground  
EAST: "RR" Rural Residential; farm ground  
WEST: "RR" Rural Residential; residences, farm ground

**PUBLIC SERVICES:** 151<sup>st</sup> Street and 29<sup>th</sup> Street are sand and gravel roads. Public sewer and water services are not available at this location.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" map depicts this site as appropriate for low-density residential usage, which is defined as 1-6 units per acre. The density of the proposed project is 1.2 dwelling units per acre. The map also indicates this site is located within the proposed northwest bypass corridor, and is also located within the 2030 Urban Service Area for City of Wichita utilities.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All nearby property is zoned "RR" Rural Residential, and is used for agricultural or large-lot residential uses. The character of this area is predominately rural, but will probably experience increasing development pressures.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "RR" Rural Residential that primarily permits large lot residential uses with a minimum lot size of two acres. The site could be developed as currently zoned. If developed as currently zoned, the site would yield a fewer number of lots.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: "SF-20" Single-family Residential zoning and "RR" Rural Residential are very similar districts whose primary difference is minimum lot size. "SF-20" permits lot sizes of 20,000 square feet and larger, whereas the "RR" district has a minimum lot size of 2 acres. If approved, the increased density should not detrimentally affect nearby residents. There may be a concern by existing neighbors if the

request is approved, there could be twice as many individual water wells on the application area than if it remains zoned as it is today. If this request is approved, the applicant can be required as part of platting to demonstrate that sufficient water quantity is available to serve the proposed development, and potentially evaluate the impact on nearby properties.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide" map depicts this site as appropriate for low-density residential usage, which is defined as 1-6 units per acre. The density of the proposed project is 1.2 dwelling units per acre. The map also indicates this site is located within the proposed northwest bypass corridor, and is also located within the 2030 Urban Service Area for City of Wichita utilities. No specific route for the bypass has been determined to-date for the proposed roadway.
6. Impact of the proposed development on community facilities: If the request is approved, there will be an increase in all publicly provided services generally provided to a residential development since the ground is vacant today. Traffic generated by the developed lots will result in a need for higher road maintenance on the adjoining sand and gravel roads.

DALE MILLER, Planning staff presented staff report.

MCKAY What is this going to do the circumvention road if it is sitting right in the middle of where they decide to go?

MILLER My understand is that since there has been a specific alignment we don't have a way to object the proposal based on that. The draft alignments that have been reviewed have the road going to the east of the project and don't go through this particular site.

DUNLAP What kind of services are out there?

MILLER There is no municipal sewer or water it will be the Alternative Sewer System. The lift station is about two miles away.

RUSS EWY, Baughman Company I will wait for rebuttal.

DR. GREGORY REICHENBERGER, 15010 W. 29<sup>th</sup> St. N., Wichita, KS 67233-7062 -My property will be surrounded by three sides of this development. When I bought this property we rezoned my property to 5 acres we are in a rural area it is slowly developing there are 8 houses and one dairy lot. These are being proposed to 1 acre developments and I have the five acres I sit on I am opposed to this request. There is an issue of water run off there is a three terrace system and the run off comes right through my property. I think this will be a traffic issue is that will be 26 new houses 15<sup>th</sup> Street is currently under water from yesterdays flood if we get flooded out and our roadways will be impacted as well. I feel like that if you do approve this I would not want to be a part of this development I want partitioned off and I don't want a part of this development.

BISHOP Are you familiar with the Alternative Waste System? What service does your home currently have?

REICHENBERGER I have a lagoon and this property will abut my lagoon and make sure they fence off their zoning from my house.

GAROFALO Your property is the notch there on the map?

REICHENBERGER Yes.

DON WEBER, 14722 W. 29<sup>th</sup> N., Wichita, KS 67223 I want some explanation on this one acre deal. When I built there 13 years ago we had to have five acres for a lagoon and I couldn't use a septic tank you had to have a lagoon.

BISHOP Have you talked to the County?

WEBER The proposed sites will be abutting up to my front porch and that many wells I don't know how the ground and water tables will be effected.

DUNALP Do you have water service out there now?

WEBER We have wells.

EWY Some of the concerns there was a concern about how this residential development would affect development on one of the five acres lots this will have no impact on the 5 acres they can develop however they want to. The run off the subdivision will carry it to the north and again it brings up the five acres development versus the one acre this conforms with the County Comprehensive Plan.

**MOTION:** To approve subject to staff comments and platting within one year.

**COULTER** moved, **MITCHELL** seconded the motion, and it carried (11-0).

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13a. **Case No.: CUP2003-48 DP267** - Alan L. and George R. Rennick, Charles R. and ConnieL. Woodard, Trustees of the Charles R. Woodard Trust and of the Connie L. Woodard Trust (owners) R & R Realty, LLC, c/o Rob Ramseyer (contract purchaser); Baughman Company, PA, c/o Terry Smythe (agent) Request Creation of Tylers Landing Commercial C.U.P. on property described as;

And

13b. **Case No.: ZON2003-44** - Alan L. and George R. Rennick, Charles R. and ConnieL. Woodard, Trustees of the Charles R. Woodard Trust and of the Connie L. Woodard Trust (owners) R & R Realty, LLC, c/o Rob Ramseyer (contract purchaser); Baughman Company, PA, c/o Terry Smythe (agent) Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

A tract of land in the Northwest Quarter of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Northwest corner of said Northwest Quarter; thence N 89 degrees 29'40" E along the north line of said Northwest Quarter, 1022.00 feet; thence S 00 degrees 30'20" W, 280.00 feet; thence S 89 degrees 29'40" W, 422.00 feet; thence S 45 degrees 28'34" W, 211.20 feet; thence S 89 degrees 44'50" W, 150.00 feet; thence S 00 degrees 15'10" E, 705.00 feet; thence S 89 degrees 44'50" W, 300.00 feet to a point on the west line of said Northwest Quarter; thence N 00 degrees 15'10" E along the west line of said Northwest Quarter, 1129.78 feet to the point of beginning, subject to road rights-of-way of record. Generally located on the southeast corner of 37<sup>th</sup> Street North and Tyler Road.

**BACKGROUND:** The applicant is requesting to create DP-267 Tylers Landing Commercial Community Unit Plan, which would be a 10+ acre development with seven parcels for commercial use. The property is located on the southeast corner of 37<sup>th</sup> Street North and Tyler Road. All the parcels are relatively small, with two parcels on 37<sup>th</sup> closest to the intersection being approximately two acres, the southernmost parcel along Tyler Road being 1 ½ acre and the remaining parcels approximately one acre in size.

Proposed uses are all "LC" Limited Commercial uses except adult entertainment uses, group homes, group residential, correctional placement residences, asphalt/concrete plant, private clubs, taverns, and drinking establishments.

Maximum building coverage is 30 percent; floor area ratio is 35 percent. Maximum height is 45 feet. Setbacks are 35 feet for exterior property lines and 15 feet for interior parcels, unless parcels are held in uniform ownership whereby no setback is needed. The C.U.P. includes provisions for landscaping per Landscape Ordinance of the City of Wichita. Lighting is limited to 24 feet in height. A screening wall is required along the interior property line bordering residential use.

The C.U.P. calls for architectural compatibility among the tracts and requires residential character of design. However, no use restrictions are included to reduce the impact of drive-through windows and overhead doors on adjoining residential lots.

Requested signage exceeds standard City of Wichita signage requirements.

The surrounding property is vacant or in suburban use except for the Central Maize Middle School located to the west. The Maize School district has a 100-acre tract for the new middle school plus for future school building expansion. A separate request for commercial and duplex zoning is being heard by MAPC for the property to the north. The property to the south is platted for "SF-5" Single-family Residential use and the property to the southeast is part of a preliminary plat for "SF-5". The land to the northwest is shown as being in the city of Maize. Current use is suburban lots.

**CASE HISTORY:** The property is unplatted.

#### **ADJACENT ZONING AND LAND USE:**

NORTH: "SF-5"; "SF-20"	Vacant, suburban
SOUTH: "SF-5"	Vacant
EAST: "SF-5"	Vacant
WEST: "SF-5"	School

**PUBLIC SERVICES:** 2002 traffic counts are unavailable. The 2030 traffic projection (ADT) was approximately 4,000 cars per day for both streets. However, these projections did not account for effect of the Northwest Bypass, which would significantly increase traffic on 37<sup>th</sup> Street North, or traffic from the 100-acre tract school site. Currently, Tyler is improved as a two-lane county arterial street standard. 37<sup>th</sup> Street North is a township road and is unpaved. No improvements are shown on the capital improvement program for the county or city.

The C.U.P. proposes three points of access on each street for a total of six openings. One proposed opening lacks the minimum separation distance from an existing drive into Central Maize Middle School, and the openings nearest the intersection would need to be right-in/right-out to conform to Access Management Policy.

Other normal public services are available or are in process of being extended to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development.

**Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed C.U.P. is in conformance with the general recommendations of the Comprehensive Plan. The proposed C.U.P. provisions only follows these objectives with respect to landscaping and shared building materials. It does not require shared internal circulation, combined signage, and exceeds Sign Code freestanding signage limits.

**Residential Objective II.A.1** seeks to use community unit plans and other tools to promote mixed use development, higher density residential environment and appropriate buffering. As proposed, the C.U.P. juxtaposes "LC" uses adjacent to low-density residential without intervening buffering of uses. For example, the C.U.P. would allow drive-through windows and overhead doors, omits restrictions limiting the size and intensity of commercial uses to "NR" type standards often found when commercial abuts residential use.

**RECOMMENDATION:** The proposed lineal arrangement of the commercial parcels along Tyler and 37<sup>th</sup> Street North increases the length of boundary with the adjoining residential lots and decreases the depth of the commercial parcels. The effect is to increase the length of common boundary where issues of noise, traffic circulation, and the proximity of outdoor work and storage areas and

loading docks to residences. The parcels are so narrow that the only locations on the sites for overhead doors and drive-through windows are within 200 feet of residential borders. These factors would suggest that further restriction of uses to the "NR" Neighborhood Retail types of uses, prohibition of auto-related uses, and additional buffering techniques be added to protect the adjoining residential use.

The potential for traffic conflicts are greatest at the peak afternoon times when traffic from the school and the retail uses would overlap. A traffic impact study was not completed, although the site would be anticipated to generate approximately 500 trips during the peak afternoon hour with general shopping center type of development. This rate would be higher if restaurants with drive-through windows or other similar high traffic generation uses were located on the parcels. Transportation improvements are included based on projected needs associated with this level of development. Staff recommends these improvements be required; alternatively, the developer should submit a traffic study to detail the level of improvements prior to approval.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject to the following conditions:

- C. APPROVE the zone change (ZON2003-00044) to "LC" Limited Commercial;
- D. APPROVE the Community Unit Plan (DP-267), subject to the following conditions:
  1. Transportation requirements:
    - e. A site plan for shall be required for review and approval by the Planning Director prior to the issuance of any building permits; the site plan shall ensure internal circulation within the parcels and joint use of ingress/egress openings and that private drive openings are not impacted/ blocked by the layout of parking stalls or landscaping.
    - f. The applicant shall provide a guarantee for right-turn accel/deceleration lanes along the perimeter of the property .
    - g. The applicant shall provide a guarantee for center left-turn lane along 37<sup>th</sup> Street North and Tyler Road.
    - h. Location of the major entrance on Tyler Road shall be located across from the major entrance to Central Maize Middle School.
    - i. Access points shall be in conformance with the Access Management Policy. The access point on Tyler Road shall be a full movement aligned across from the entrance to Central Maize Middle School and serving as a joint access to Parcel 1 and 2.
    - j. The developer shall guarantee 12-½ percent share of cost for the intersection signalization at Tyler Road and 37<sup>th</sup> Street North.
    - k. Provision of a traffic impact study is not required if the applicant accepts the above recommendations.
  2. No development shall be allowed along 37<sup>th</sup> Street North until the street is paved to a two-lane county standard.
  3. General Provision #7 shall be amended as follows:
    - a. Add the word "monument" to GP#7A to clarify that one monument sign is permitted for each parcel. Monument signage shall be subject to the following area restrictions:
      - Parcel 1: 150 sq. ft. of signage, located at least 75 feet from southern property line
      - Parcel 2: 150 sq. ft. of signage
      - Parcel 3: 150 sq. ft. of signage
      - Parcel 4: 150 sq. ft. of signage on each frontage (maximum of 2 signs)
      - Parcel 5: 150 sq. ft. of signage
      - Parcel 6: 150 sq. ft. of signage
      - Parcel 7: 150 sq. ft. of signage, located at least 75 feet from eastern property line
    - b. Add to B: "and the total square footage of monument signs shall not exceed 80 % of arterial street frontage."
    - c. Insert the word "Interior" to GP#7E to clarify the provision applies to interior window display signs
    - d. Limit the maximum height of monument signs to 20 feet.
  4. Add to General Provision #10A: "Limited height of light poles, including base, to 24 feet."
  5. Add to General Provision #12: "All parcels shall share a similar landscape palette. The landscape buffer shall be provided at a rate of one tree per 30 feet."
  6. Add to General Provision #15: "from 37<sup>th</sup> Street North, Tyler Road, or the rear of residential lots to the east and south."
  7. Add to General Provision #16 as follows: "No predominately metal facades shall be allowed."
  8. Add to General Provision #18: "Uses shall be limited to those permitted by-right in the "LC" Limited Commercial district, and recreation and entertainment, indoor, shall only be permitted by separate Conditional Use approval. No single use greater than 8,000 square feet in size except for a grocery store or drug store shall be permitted. Restaurants shall not have drive-through windows located within 200 feet of residential zoning and order boards shall not be audible from the residential property lines. No auto-serving uses, including but not limited to vehicle repair, limited, convenience stores with gas islands, service stations and car washes, shall be permitted on Parcels 1, 2, 6 and 7. No overhead doors shall be permitted within 150 feet of residential zoning and shall not be facing any residential zoning district."
  9. The height of buildings shall be limited to 35 feet.
  10. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  11. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.



12. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
13. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-267) includes special conditions for development on this property.
14. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding property is vacant or in suburban use except for the Central Maize Middle School located to the west. The Maize School district has a 100-acre tract for the new middle school plus for future school building expansion. A separate request for commercial and duplex zoning is being heard by MAPC for the property to the north. The property to the south is platted for "SF-5" Single-family Residential use and the property to the southeast is part of a preliminary plat for "SF-5". The land to the northwest is shown as being in the city of Maize. Current use is suburban lots.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use, but the use of the land closest to the arterial intersection for neighborhood serving and small scale commercial uses is typical of development patterns in the Wichita metropolitan area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property should be mitigated by the recommended restrictions to lower intensity commercial uses and site the development requirements to buffer the commercial use from the single-family use.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development, which is not in conformance with the zoning requested. The proposed use restrictions and site development requirements seek to follow commercial and residential objectives and locational guidelines of the *Comprehensive Plan*.
5. Impact of the proposed development on community facilities: The traffic increases from the development should be mitigated by the addition of accel/decel lanes and left-turn lanes. Other community facilities are being extended to serve new development in the vicinity. The development, or other residential development in the vicinity, will require paving of 37<sup>th</sup> Street North.

**MOTION:** To defer Item 13a & 13b for 2 weeks to October 23, 2003 MAPC meeting.

**DUNLAP** moved, **BISHOP** seconded the motion, and it carried (12-0).

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- 14a. **Case No.: ZON2003-47** - Rosetta B. Presley (owner); Builder Development Inc., c/o Elton Parsons; Larry Qualls (contract purchaser) Request Zone change from "TF-3" Two-family Residential to "LC" Limited Commercial on property described as;

Lots 14, 16, 18 & 20, Brooks & Oldham's Addition

and

- 14b. **Case No.: CON2003-37** - Rosetta B. Presley (owner); Builder Development Inc., c/o Elton Parsons; Larry Qualls (contract purchaser) Request Conditional Use for a car wash to be located within 200 feet of residential property on property described as;

Lots 2-20 (even) Arkansas Avenue, Brooks & Oldham's Addition. Generally located at the southeast corner of 21<sup>st</sup> Street North and Arkansas.

**BACKGROUND:** The applicant is requesting a Conditional Use to allow a 24-hour car wash to be located within 200-ft of residential zoning in the "LC" Limited Commercial zoning district. The 0.97-acre site is located on the southeast corner of the 21<sup>st</sup> Street North – Arkansas Avenue intersection. The site is currently zoned "LC" Limited Commercial on the north six (6) lots and "TF-3" two-family residential on the south four (4) lots. The applicant also requests a zoning change for the site's four "TF-3" lots to "LC" on this agenda: ZON2003-00029. The zone change will facilitate the redevelopment of the site. The north six lots ("LC") are developed as a tire repair garage. The two most southern lots ("TF-3") are developed with one single-family residence on them, with the two remaining lots ("TF-3"), between the residence and the tire store not developed.

The 21<sup>st</sup> Street – Arkansas Avenue intersection, where the site is located, marks the end of extensive unbroken commercial zoning strips along both the 21<sup>st</sup> Street and the Arkansas frontages. The commercial zoning and the predominately neighborhood retail/commercial development on 21<sup>st</sup> extends from the intersection, east to Broadway, broken infrequently by scattered single-family housing and several churches. Although the Arkansas frontage north of the intersection is zoned commercial up to 25<sup>th</sup> Street North, it is developed more as single-family residential with churches, a post office and not infrequent neighborhood retail and office mixed in. South of the intersection, Arkansas is a residential road, zoned two-family residential on both its sides, developed predominately as single family residential. There is a church and an elementary school along this portion of Arkansas on its west

side. Behind these two street's commercial zoning strips, there is a mixture of single-family, two-family residential and multi-family zoning, which have been developed predominately as single-family residential.

The site (with the exception of its four "TF-3" zoned lots) is one of four "LC" zoned sites on the 21<sup>st</sup> Street – Arkansas intersection. The other three sites are developed as a Kentucky Fried Chicken fast food restaurant (a national franchise, west side), an O'Reilly's auto supply store (regional franchise, northwest side) and a Quick Trip convenience store (regional franchise northeast side). These three developments are a more intense commercial activity (size of stores, hours of operation, services provided) than the predominately neighborhood retail in the area. These three sites are also probably among the most recent developments in the area, where older development prevails. The KFC has approximately 30-feet of landscape buffer between its parking and the abutting single-family residence on its south side. The proposed site has "TF-3" zoning on its south, southeast and southwest sides, with both sides developed as single-family residential and a duplex. There is a single-family residence abutting the site's south side, approximately 8-10-feet separate the residence from the site's south property line. The site has an older freestanding building used for retail and a restaurant on its east side.

The applicant has submitted a site plan. Dedication of 10-foot of ROW to 21<sup>st</sup> Street North, a 10-foot sidewalk and utility easement along 21<sup>st</sup> Street North, 10-foot of ROW to Arkansas and the extent the alley needs to be paved are issues that have been brought to the applicant's attention. The extent of the paving of the alley will be determined by the drainage plan, during replatting.

**CASE HISTORY:** The site is platted as Lots 2 – 20 (even), Brooks and Oldham Addition, which was recorded in 1902. An exception, BZA 1-63, with conditions for a car sales lot on the east 70-feet of Lots 2, 4, 6, 8, 10, & 12 was approved by the BZA 02-26-1963. July 16, 2003 DAB VI considered CON03-20 & ZON03-29, request for a car wash with an associated zoning change of "TF-3" to "LC", at their July 16, 2003 meeting. The property owners abutting the south side of the car wash site protested the car wash, noting that the car wash property would be 8 feet from their bedroom window. They protested that a 24-hour car wash was not a compatible use next to residential as presented with a 5-foot buffer and that the car wash would cause their property to decrease in value as residential. The DAB recommended approval of the conditional use and the zone change (9-0) per staff's recommendation, with additional recommendations; (1) the buffer on the south side be increased to a minimum of 10-feet, (2) no parking on the south side of the car wash site and (3) approval of the ingress – egress to the site be given careful consideration by the Traffic Engineer, in regards to full movement and right in – right out. The applicant withdraw the CON03-20 & ZON03-29 prior to the July 24, 2003 MAPC meeting. The current conditional use for a car wash and the associated zoning change of "TF-3" to "LC", is essentially the same request for this site, the difference being that the applicant has bought the south property. The south property, with a house on it, was the protesting neighbor. The additional lots bring an additional 50-feet (along Arkansas) x 173-feet to the site.

#### **ADJACENT ZONING AND LAND USE:**

NORTH:	"LC"	Limited Commercial	Convenience store, auto supply
	"B"	Multi-Family	fast food, restaurant
SOUTH:	"TF-3"	Duplex	Single-family residential
EAST:	"LC"	Limited Commercial	Free standing retail, duplex
	"TF-3"	Duplex	
WEST:	"LC"	Limited Commercial	Fast food, single-family residential
	"TF-3"	Duplex	

**PUBLIC SERVICES:** The north side of the site has frontage on 21<sup>st</sup> Street North, a four-lane arterial with left-turn lanes. Arkansas Avenue, on the site's west frontage is a residential road. North of the intersection Arkansas is a three lane arterial. There are approximately 12,349 ATD north of the intersection, approximately 5,149 ATD south of the intersection, approximately 14,587 ATD west of the intersection and approximately 17,411 ATD east of the intersection. Recent improvements to the intersection include left turn lanes for traffic going north, east and west, plus brick laid in the pedestrian crosswalk areas. There are no other CIP projects scheduled. Municipal water and sewer services are currently provided to this site.

**CONFORMANCE TO PLANS/POLICIES:** Wichita Land Use Guide" of the 1999 *Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this property, including the two undeveloped "TF-3" lots as being "commercial". The Unified Zoning Code requires a Conditional Use for a car wash when it is located in "LC" zoning or within 200 feet of residential zoning. The Unified Zoning Code lists 14 conditions that a car wash must comply with. Any modifications recommended by the MAPC to these conditions would require the request to be forwarded to the Wichita City Council for a final decision.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for the Conditional use and the zoning change be APPROVED, subject to replatting within a year and the following conditions:

- A. The car wash shall be developed according to the site plan and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code, plus on site pole lights no higher than 14-foot with no lighting located south of the entrance off of Arkansas Avenue, hooded and directed onto the site, a 20-foot monument 138-square foot in size and no dryer allowed on the automatic wash bay.
- B. The materials and design of the facilities shall be as proposed by the applicant, including pitched gabled roofs with outside walls constructed with a combination of concrete block, synthetic stucco or similar materials.
- C. The applicant shall turn in a landscape plan, including evergreens every 15-feet in the south landscape buffer for approval by the Planning Director.
- D. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- E. Access onto Arkansas will be per approval of the Traffic Engineer. The applicant will use the alley onto 21<sup>st</sup> Street North as access to the site.
- F. The circulation and queuing will pattern shall be approved by the Traffic Engineer prior to construction on the site.
- G. The applicant shall provide guarantee for the paving the length and entire width of the alley where it abuts the site's west side or the entire length of the alley if the Public Works Engineer requires it. Improvements will be to City Standards, as approved by the Public Works Engineer.

- H. Dedicate 10-foot of ROW to 21<sup>st</sup> Street North, 10-foot of sidewalk and utility easement to 21<sup>st</sup> Street North and 10-foot of ROW to Arkansas.
- I. After a review of the development and upon appropriate findings, any violation of the conditions of approval will allow the Conditional Use to be declared null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has extensive unbroken commercial ("LC" and some "GC" zoning) zoning strips along the 21<sup>st</sup> Street and Arkansas frontages, north and east of their intersection. The 21<sup>st</sup> Street frontage is almost exclusively neighborhood retail and commercial. The Arkansas frontage is more single family with not infrequent neighborhood retail and office mixed in. The nearest properties zoned residential are immediately behind the commercial zoned strips and are developed predominately single-family residential. This residential development - neighborhoods are extensive behind the commercial strips. The 21<sup>st</sup> - Arkansas intersection, where the site is located, has probably the most recent development in the area (the other probably being a restaurant just north of the intersection) and the development is more commercial in its character, rather than neighborhood retail.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, which accommodates office, retail, commercial and complementary land use. Given the site's location on the two arterials and the retail /commercial character of the Arkansas and 21<sup>st</sup> strips with the abutting residential, it could be developed for retail, office, commercial or complementary land uses. The rezoning of the "TF-3" lots to "LC" would facilitate redevelopment of the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the screening, lighting, and compatibility standards of the Unified Zoning Code and the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, which should limit noise, lighting, and other activity from adversely impacting abutting residential zoning and developments.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "commercial" uses. "Commercial" accommodates office, retail, and commercial and complementary land use. The existing three developments on the 21<sup>st</sup> - Arkansas intersection all share similar intensity of uses with the proposed car wash, all which are less neighborhood retail and more commercial in character. The Quick Trip regional convenience store across 21<sup>st</sup> Street and north of the site has supervised 24-hour indoor-outdoor activity, with most of it involving autos as a means of getting to it or using it for fueling. The O'Reilley's regional auto supply retail store across 21<sup>st</sup> and northwest of the site is developed exclusively for auto maintenance. The KFC national fast food restaurant across Arkansas and west of the site has extensive auto traffic going through it, while customers place their orders from their autos into an outdoor speaker. The KFC also has an approximately 30-foot landscape buffer and solid screening between its parking and the abutting single-family residence on its south side, to minimize commercial traffic intrusion. The car wash would be considered a complimentary land use (although it would represent the most intense use of the intersection) to these uses and will not have the amount of outside parking/display of autos waiting service or any of the mechanical activity as the existing tire repair store.
5. Impact of the proposed development on community facilities: Probable increase in traffic at the site including 24-hour traffic, increase in on site drainage.

BILL LONGNECKER, Planning staff presented staff report. I need to note that there are a couple of Staff comments that were modified by the DAB. The first being Item G of the conditions, this should read "The applicant shall provide guarantee for the paving the length and entire width of the alley where it abuts the site's west side or the entire length of the alley if the Public Works Engineer requires it." The other change is Item G, where the applicant is requesting that access be determined at the time of platting. Staff has no objections to these changes.

BARFIELD In the DAB meeting minutes, what is this detail parking on the north side of the property?

LONGNECKER Getting the parking away from the south side of the property, where it abuts residential.

GAROFALO I think it mentions in the report that the applicant has purchased the property from the residences from the south?

LONGNECKER That is correct.

RUSS EWY, BAUGHMAN COMPANY We had submitted about 8 parallel parking spaces on the south end of the site. The DAB requested, if at all possible, we move the parking to the north side of the site. The concern being that these parking spaces are going to be utilized for detail and cleaning wherever you put them and that it would be best to move them away from the residential on the south side of the site.

DUNLAP Is your site plan to scale?

EWY Yes.

GAROFALO You say the cars are going to line up like that are you changing it to the north?

EWY With the required 4 car queuing for self serve and 6 for the automatic wash oriented from the south, traffic would vacuum and dry on the north side of the property, away from the residences to the south, then exit onto 21<sup>st</sup> or Arkansas. The site layout directs the traffic flow and cleaning activities away from the residential on the south towards the north then out.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**BARFIELD** moved, **HENTZEN** seconded the motion, and it carried (10-0).

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The Metropolitan Area Planning Department informally adjourned at 4:44 p.m.

State of Kansas     )  
Sedgwick County    ) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)